

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF TEXAS
3 AMARILLO DIVISION

4 UNITED STATES OF AMERICA

5 VS.

6 BART WADE REAGOR

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§

CRIMINAL ACTION

NO. 2:21-CR-025-Z (01)

7 =====

8 TRANSCRIPT OF CRIMINAL TRIAL BY JURY
9 BEFORE THE HONORABLE MATTHEW J. KACSMARYK
10 UNITED STATES DISTRICT JUDGE

11 OCTOBER 14 & 15, 2021

12 VOLUME IV OF IV

13 AMARILLO, TEXAS

14 =====

15 A-P-P-E-A-R-A-N-C-E-S

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(The following took place in open court with the defendant present, but without the jury present.)

THE COURT: Please be seated. The Court calls Criminal Action No. 2:21-CR-025-Z-BR-1, United States of America versus Bart Wade Reagor.

And we will now, outside the presence of the jury, will finalize what we worked on yesterday during the Charge Conference.

Are the parties in receipt of what has been marked as Document 90, the Court's Order on the final remaining element of the proposed jury charge?

MR. HAAG: Yes, Your Honor.

THE COURT: And does the Defense have a copy of that Document 90?

MR. COGDELL: Yes, sir.

THE COURT: Okay. Does the Government need to make any objections on the record based on that final ruling or on any other part of the Final Jury Charge as it was submitted to the parties last night?

MR. HAAG: No objection, Your Honor.

THE COURT: Does the Defense need to make any objections on the record outside the presence of the jury relevant either to that order or the Final Jury Charge as submitted last night?

1 **MR. NORRIS:** No further objections, Your Honor.

2 **THE COURT:** Okay. And the Court does find that you
3 have preserved those objections at the Charge Conference for
4 appellate purposes.

5 **MR. NORRIS:** Thank you, Your Honor.

6 **THE COURT:** So, at this point, it's my
7 understanding from the Pretrial Conference that the parties'
8 preference is for the Court to read the charge to the jury,
9 and then we'll proceed with closing arguments after that.

10 Is that the protocol that the parties have agreed
11 to?

12 **MR. HAAG:** Yes --

13 **MR. COGDELL:** Yes.

14 **MR. HAAG:** -- Your Honor, it is.

15 **THE COURT:** Okay. Mr. Cogdell, that's your
16 preference as well?

17 **MR. COGDELL:** It is, Your Honor.

18 **THE COURT:** Okay. So under the rules, I'll read
19 aloud the charge. We will then have the Rule 30 conference
20 at the bench. Any objections to the reading of the charge
21 will be taken there.

22 I'll just reiterate that counsel should speak
23 directly into the microphones. Without any objections to the
24 reading, then you'll return. We'll distribute the copies,
25 and then I'll allow you to begin your closing arguments.

1 And, refresh my recollection, you do or do not want
2 the jury to have copies of the charge during closing? I
3 can't recall what we decided on that.

4 **MR. COGDELL:** I'm fine either way, Your Honor.

5 **THE COURT:** Okay. Does the Government have a
6 preference?

7 **MR. HAAG:** My preference would be that they get the
8 jury charge after closing argument just so that they're not
9 distracted reading it, but --

10 **THE COURT:** Okay. That's my typical practice, but
11 I was amenable to parties' agreement on that, so I think
12 that's what we'll do.

13 We'll be making copies of those charges once all
14 the objections are on the record and once it's read aloud and
15 work diligently to make sure that those are ready after
16 closing arguments, at which point they'll be distributed.

17 Is that okay, Mr. Cogdell?

18 **MR. COGDELL:** Yes, that's fine.

19 **THE COURT:** Is that okay, Mr. Haag?

20 **MR. HAAG:** Yes, Your Honor.

21 **THE COURT:** Okay. Please bring in the jury.

22 **MR. COGDELL:** Judge, could I have 90 seconds?

23 **THE COURT:** Yes. Well, let's have 90 seconds, and
24 then bring in the jury.

25 **MR. HAAG:** Your Honor, and I'm not sure if we

1 covered this, but Mr. Cogdell and I are both requesting 45
2 minutes total for closing arguments.

3 THE COURT: And are you going to distribute that
4 30, 15, or some sort of holdback?

5 MR. HAAG: Yes, Your Honor.

6 THE COURT: Okay.

7 MR. HAAG: Thirty for my closing argument, and then
8 15 for rebuttal, and then I assume Mr. Cogdell uses his 45.

9 THE COURT: For efficiency reasons, I understand
10 that you have the absolute right under the rules to make an
11 objection to the reading. As presented to the parties last
12 night, are there any scrivener errors, any typographical
13 errors, anything that you caught in that Final Jury Charge
14 before we go to print press?

15 MR. HAAG: No, Your Honor.

16 THE COURT: Okay. I'll start running the printing
17 press for the copies for the jury at this point, anticipating
18 that there won't be any final changes to that.

19 Any objections from the Defense?

20 MR. NORRIS: No, Your Honor.

21 THE COURT: Okay. And, as soon as the 90 seconds
22 are expired, we'll call in the jury.

23 (Pause.)

24 COURT SECURITY OFFICER: All rise for the jury.

25 (The jury returned to the courtroom.)

1 **THE COURT:** Please be seated. And the Court has
2 excused Mr. Cogdell very briefly for final preparations.

3 In the interim, I'm going to explain what will
4 happen next. So the parties have closed their case. We are
5 now entering into the phase where you will hear their closing
6 arguments on this case, but, before they do that, I will read
7 aloud the jury charge in this case.

8 This will be the document distributed after closing
9 arguments. This will be your guide as to the law to be
10 applied to the facts in this case as you find it. So after I
11 read this Final Jury Charge, the parties will move into
12 closing arguments.

13 The Government will begin. They've requested
14 30 minutes; that will be followed by Defendant's closing
15 argument 45 minutes, and then the Government has requested
16 15 minutes for rebuttal, so that will be the order of
17 operation.

18 At this point, I will read you the Final Jury
19 Charge that you will later receive in hard copy form, so
20 please pay attention closely to this, but you will have a
21 hard copy after closing arguments.

22 **READING OF THE FINAL JURY CHARGE**

23 **THE COURT:** Final Jury Charge.

24 1.03 Introduction to Final Instructions

25 Members of the Jury:

1 In any jury trial, there are, in effect, two
2 judges. I am one of the judges; the other is the jury. It
3 is my duty to preside over the trial and to decide what
4 evidence is proper for your consideration. It is also my
5 duty at the end of the trial to explain to you the rules of
6 law that you must follow and apply in arriving at your
7 verdict.

8 First, I will give you some general instructions
9 which apply in every case such as, for example, instructions
10 about the burden of proof and how to judge the believability
11 of witnesses. Then I will give you some specific rules of
12 law about this particular case, and, finally, I will explain
13 to you the procedures you should follow in your
14 deliberations.

15 1.04 Duty to Follow Instructions

16 You, as jurors, are the judges of the facts. But
17 in determining what actually happened — that is, in reaching
18 your decision as to the facts — it is your sworn duty to
19 follow all of the rules of law as I explain them to you.

20 You have no right to disregard or give special
21 attention to any one instruction, or to question the wisdom
22 or correctness of any rule I may state to you. You must not
23 substitute or follow your own notion or opinion as to what
24 the law is or ought to be. It is your duty to apply the law
25 as I explain it to you, regardless of the consequences.

1 It is also your duty to base your verdict solely
2 upon the evidence, without prejudice or sympathy. That was
3 the promise you made and the oath you took before being
4 accepted by the parties as jurors, and they have the right to
5 expect nothing less.

6 1.05 Presumption of Innocence,

7 Burden of Proof, Reasonable Doubt

8 The indictment or formal charge against a defendant
9 is not evidence of guilt. Indeed, the defendant is presumed
10 by the law to be innocent. The defendant begins with a clean
11 slate. The law does not require a defendant to prove his
12 innocence or produce any evidence at all, and no inference
13 whatever may be drawn from the election of a defendant not to
14 testify.

15 The Government has the burden of proving the
16 defendant guilty beyond a reasonable doubt, and if it fails
17 to do so, you must acquit the defendant. While the
18 Government's burden of proof is a strict or heavy burden, it
19 is not necessary that the defendant's guilt be proved beyond
20 all possible doubt. It is only required that the
21 Government's proof exclude any reasonable doubt concerning
22 the defendant's guilt.

23 A "reasonable doubt" is a doubt based upon reason
24 and common sense after careful and impartial consideration of
25 all the evidence in the case. Proof beyond a reasonable

1 doubt, therefore, is proof of such a convincing character
2 that you would be willing to rely and act upon it without
3 hesitation in making the most important decisions of your own
4 affairs.

5 1.06 Evidence - Excluding What is Not Evidence

6 As I told you earlier, it is your duty to determine
7 the facts. To do so, you must consider only the evidence
8 presented during the trial. Evidence is the sworn testimony
9 of the witnesses, including stipulations, and the exhibits.
10 The questions, statements, objections, and arguments made by
11 the lawyers are not evidence.

12 The function of the lawyers is to point out those
13 things that are most significant or most helpful to their
14 side of the case, and in so doing, to call your attention to
15 certain facts or inferences that might otherwise escape your
16 notice. In the final analysis, however, it is your own
17 recollection and interpretation of the evidence that controls
18 in the case. What the lawyers say is not binding upon you.

19 During the trial I sustained objections to certain
20 questions and exhibits. You must disregard those questions
21 and those exhibits entirely. Do not speculate as to what the
22 witness would have said if permitted to answer the question
23 or as to the contents of an exhibit. Also, certain testimony
24 or other evidence has been ordered removed from the record,
25 and you have been instructed to disregard this evidence. Do

1 not consider any testimony or other evidence which has been
2 removed from your consideration in reaching your decision.
3 Your verdict must be based solely on the legally admissible
4 evidence and testimony.

5 Also, do not assume from anything I may have done
6 or said during the trial as stating that I have any opinion
7 concerning any of the issues in this case. Except for the
8 instructions to you on the law, you should disregard anything
9 I may have said during the trial in arriving at your own
10 verdict.

11 1.08 Evidence - Inferences - Direct

12 And Circumstantial

13 In considering the evidence, you are permitted to
14 draw such reasonable inferences from the testimony and
15 exhibits as you feel are justified in the light of common
16 experience. In other words, you may make deductions and
17 reach conclusions that reason and common sense lead you to
18 draw from the facts which have been established by the
19 evidence.

20 Do not be concerned about whether evidence is
21 direct evidence or circumstantial evidence. You should
22 consider and weigh all of the evidence that was presented to
23 you.

24 "Direct evidence" is the testimony of one who
25 asserts actual knowledge of a fact, such as an eyewitness.

1 "Circumstantial evidence" is proof of a chain of events and
2 circumstances indicating that something is or is not a fact.

3 The law makes no distinction between the weights to
4 be given either direct or circumstantial evidence, but the
5 law requires that you, after weighing all of the evidence,
6 whether direct or circumstantial, be convinced of the guilt
7 of the defendant beyond a reasonable doubt before you can
8 find him guilty.

9 1.09 Credibility of Witnesses

10 I remind you that it is your job to decide whether
11 the Government has proved the guilt of the defendant beyond a
12 reasonable doubt. In doing so, you must consider all of the
13 evidence. This does not mean, however, that you must accept
14 all of the evidence as true or accurate.

15 You are the sole judges of the credibility or
16 believability of each witness and the weight to be given to
17 the witness' testimony. An important part of your job will
18 be making judgments about the testimony of the witnesses who
19 testified in this case. You should decide whether you
20 believe all, some part, or none of what each person had to
21 say, and how important that testimony was. In making that
22 decision, I suggest that you ask yourselves a few questions:

23 Did the witness impress you as honest?

24 Did the witness have any particular reason not to
25 tell the truth?

1 Did the witness have a personal interest in the
2 outcome of the case?

3 Did the witness have any relationship with either
4 the government or the defense?

5 Did the witness seem to have a good memory?

6 Did the witness clearly see or hear the things
7 about which he testified?

8 Did the witness have the opportunity and ability to
9 understand the questions clearly and answer them directly?

10 Did the witness' testimony differ from the
11 testimony of other witnesses?

12 These are a few of the considerations that will
13 help you determine the accuracy of what each witness said.

14 Your job is to think about the testimony of each
15 witness you have heard and decide how much you believe of
16 what each witness had to say. In making up your mind and
17 reaching a verdict, do not make any decisions simply because
18 there were more witnesses on one side than on the other. Do
19 not reach a conclusion on a particular point just because
20 there were more witnesses testifying for one side on that
21 point. You will always bear in mind that the law never
22 imposes upon a defendant in a criminal case the burden or
23 duty of calling any witnesses or producing any evidence.

24 1.11 Impeachment By Prior Inconsistencies

25 The testimony of a witness may be discredited by

1 showing that the witness testified falsely, or by evidence
2 that at some other time the witness said or did something, or
3 failed to say or do something, which is inconsistent with the
4 testimony the witness gave at this trial.

5 Earlier statements of a witness were not admitted
6 in evidence to prove that the contents of those statements
7 are true. You may not consider the earlier statements to
8 prove that the content of an earlier statement is true. You
9 may only use earlier statements to determine whether you
10 think the earlier statements are consistent or inconsistent
11 with the trial testimony of the witness and therefore whether
12 they affect the credibility of that witness.

13 If you believe that a witness has been discredited
14 in this manner, it is your exclusive right to give the
15 testimony of that witness whatever weight you think it
16 deserves.

17 1.13 Impeachment By Prior Convictions (Witness)

18 You have been told that the witness, Shane Smith,
19 was convicted in 2019 of Wire Fraud, and that the witness,
20 Steven Reinhart, was convicted in 2021 of Misprision of a
21 Felony. A conviction is a factor you may consider in
22 deciding whether to believe that witness, but it does not
23 necessarily destroy the witness' credibility. It has been
24 brought to your attention only because you may wish to
25 consider it when you decide whether you believe the witness'

1 testimony. It is not evidence of anything else.

2 1.18 Expert Opinion Testimony

3 If scientific, technical, or other specialized
4 knowledge might assist the jury in understanding the evidence
5 or in determining a fact in issue, a witness qualified by
6 knowledge, skill, experience, training, or education may
7 testify and state an opinion concerning such matters.

8 Merely because such a witness has expressed an
9 opinion does not mean, however, that you must accept this
10 opinion. You should judge such testimony like any other
11 testimony. You may accept it or reject it and give it as
12 much weight as you think it deserves, considering the
13 witness' education and experience, the soundness of the
14 reasons given for the opinion, and all other evidence in this
15 case.

16 1.19 On or About

17 You will note that the Indictment charges that the
18 offense was committed on or about a specific date. The
19 Government does not have to prove that the crime was
20 committed on that exact date, so long as the Government
21 proves beyond a reasonable doubt that the defendant committed
22 the crime on a date reasonably near July 14, 2017 as to
23 Count One, February 28, 2018 as to Count Two, and October 22,
24 2016 to in or about February 2018 as to Count Three, the
25 dates stated in the Indictment.

1 1.21 Caution - Consider Only the Crimes Charged

2 You are here to decide whether the Government has
3 proved beyond a reasonable doubt that the defendant is guilty
4 of the crime charged. The defendant is not on trial for any
5 act, conduct, or offense not alleged in the Indictment.
6 Neither are you called upon to return a verdict as to the
7 guilt of any other person or persons not on trial as a
8 defendant in this case, except as you are otherwise
9 instructed.

10 1.22 Caution - Punishment

11 If a defendant is found guilty, it will be my duty
12 to decide what the punishment will be. You should not be
13 concerned with punishment in any way. It should not enter
14 your consideration or discussion.

15 1.23 Single Defendant - Multiple Counts

16 A separate crime is charged in each count of the
17 Indictment. Each count, and the evidence pertaining to it,
18 should be considered separately. The fact that you may find
19 the defendant guilty or not guilty as to one of the crimes
20 charged should not control your verdict as to any other.

21 1.32 Similar Acts

22 You have heard evidence of acts of the defendant
23 which may be similar to those charged in the Indictment, but
24 which were committed on other occasions. You must not
25 consider any of this evidence in deciding if the defendant

1 committed the acts charged in the Indictment. However, you
2 may consider this evidence for other, very limited, purposes.

3 If you find beyond a reasonable doubt from other
4 evidence in this case that the defendant did commit the acts
5 charged in the Indictment, then you may consider evidence of
6 the similar acts allegedly committed on other occasions to
7 determine:

8 Whether the defendant had the state of mind or
9 intent necessary to commit the crime charged in the
10 Indictment; or

11 Whether the defendant had a motive or the
12 opportunity to commit the acts charged in the Indictment; or

13 Whether the defendant acted according to a plan or
14 in preparation for commission of a crime; or

15 Whether the defendant committed the acts for which
16 he is on trial by accident or mistake.

17 These are the limited purposes for which any
18 evidence of other similar acts may be considered.

19 1.40 Materiality

20 As used in these instructions, a representation,
21 statement, pretense, or promise is material if it has a
22 natural tendency to influence, or is capable of influencing,
23 the decision of the person or entity to which it is
24 addressed. The Government can prove materiality in either of
25 two ways. First, a representation, statement, pretense, or

1 promise is material if a reasonable person would attach
2 importance to its existence or nonexistence in determining
3 his choice of action in the transaction in question. Second,
4 a statement could be material, even though only an
5 unreasonable person would rely on it, if the person who made
6 the statement knew or had reason to know his victim was
7 likely to rely on it.

8 In determining materiality, you should consider
9 that naivety, carelessness, negligence, or stupidity of a
10 victim does not excuse criminal conduct, if any, on the part
11 of the defendant.

12 1.41 Knowingly - To Act

13 The word "knowingly," as that term has been used
14 from time to time in these instructions, means that the act
15 was done voluntarily and intentionally, not because of
16 mistake or accident.

17 2.58B Bank Fraud

18 With regard to Counts One and Two of the
19 Indictment, Title 18, United States Code, Section 1344(2)
20 makes it a crime for anyone to knowingly execute a scheme or
21 artifice to obtain any money, funds, assets, securities, or
22 other property owned by or under the custody or control of an
23 insured financial institution by means of false or fraudulent
24 pretenses, representations, or promises.

25 For you to find the defendant guilty of Counts One

1 or Two, you must be convinced that the Government has proved
2 each of the following beyond a reasonable doubt:

3 First: That the defendant knowingly executed a
4 scheme or artifice;

5 Second: That the scheme or artifice was executed
6 to obtain money or other property from a financial
7 institution, as alleged in the Indictment;

8 Third: That the scheme or artifice was executed by
9 means of false or fraudulent pretenses, false or fraudulent
10 representations, or false or fraudulent promises; and

11 Fourth: That the false or fraudulent pretences,
12 representations, or promises were material.

13 A "scheme or artifice" means any plan, pattern, or
14 course of action intended to deceive others in order to
15 obtain something of value, such as money, from the
16 institution to be deceived. It is not necessary that the
17 Government prove all of the details alleged in the Indictment
18 concerning the precise nature of the alleged scheme or
19 artifice, or that the alleged scheme or artifice actually
20 succeeded. What must be proved beyond a reasonable doubt is
21 that the accused knowingly executed a scheme that was
22 substantially similar to the scheme alleged in the
23 Indictment.

24 A scheme or artifice is executed by means of false
25 or fraudulent pretenses, representations, or promises when

1 the false or fraudulent pretenses, representation, or promise
2 were the mechanism inducing the bank to part with the money,
3 funds, assets, securities, or other property under its
4 control.

5 A representation, pretense, or promise is false if
6 it is known to be untrue or is made with reckless
7 indifference as to its truth or falsity. A representation is
8 also false when it constitutes a half truth, or effectively
9 omits or conceals a material fact, provided it is made with
10 intent to defraud.

11 "Financial institution" means an insured depository
12 institution insured by the Federal Deposit Insurance
13 Corporation.

14 2.47 False Statements to a Bank

15 With regard to Count Three of the Indictment,
16 Title 18, United States Code, Section 1014 makes it a crime
17 for anyone to knowingly make a false statement to a federally
18 insured bank for the purpose of influencing the lending
19 activities of a federally insured bank.

20 For you to find the defendant guilty of Count
21 Three, you must be convinced that the Government has proved
22 each of the following beyond a reasonable doubt:

23 First: That the defendant made a false statement
24 to International Bank of Commerce as charged;

25 Second: That the defendant knew the statement was

1 false when the defendant made it;

2 Third: That the defendant did so for the purpose
3 of influencing a lending action of the institution,
4 convincing the bank to give the defendant a loan for working
5 capital; and

6 Fourth: That International Bank of Commerce was
7 federally insured.

8 It is not necessary, however, to prove that the
9 institution involved was, in fact, influenced or misled.
10 What must be proven is that the defendant intended to
11 influence the lending decision of the bank by the false
12 statement. To make a false statement to a federally insured
13 bank, the defendant need not directly submit the false
14 statement to the institution. It is sufficient if the
15 defendant submits the statement to a third party, knowing
16 that the third party will submit the false statement to the
17 federally insured bank.

18 2.04 Aiding and Abetting

19 18, United States Code, Section 2

20 The guilt of a defendant in a criminal case may be
21 established without proof that the defendant personally did
22 every act constituting the offense alleged. The law
23 recognizes that, ordinarily, anything a person can do for
24 himself may also be accomplished by him through the direction
25 of another person as his or her agent, or by acting in

1 concert with, or under the direction of, another person or
2 persons in a joint effort or enterprise.

3 If another person is acting under the direction of
4 the defendant or if the defendant joins another person or
5 performs acts with the intent to commit a crime, then the law
6 holds the defendant responsible for the acts and conduct of
7 such other persons just as though the defendant had committed
8 the acts or engaged in such conduct.

9 Before any defendant may be held criminally
10 responsible for the acts of others, it is necessary that the
11 accused deliberately associate himself in some way with the
12 crime and participate in it with the intent to bring about
13 the crime.

14 Mere presence at the scene of a crime and knowledge
15 that a crime is being committed are not sufficient to
16 establish the defendant either directed or aided and abetted
17 the crime unless you find beyond a reasonable doubt that the
18 defendant was a participant and not merely a knowing
19 spectator.

20 In other words, you may not find any defendant
21 guilty unless you find beyond a reasonable doubt that every
22 element of the offense as defined in these instructions was
23 committed by some person or persons, and that the defendant
24 voluntarily participated in its commission with the intent to
25 violate the law.

1 For you to find the defendant guilty of aiding and
2 abetting bank fraud, you must be convinced that the
3 Government has proved each of the following beyond a
4 reasonable doubt:

5 First: That the offense of bank fraud was
6 committed by some person;

7 Second: That the defendant associated with the
8 criminal -- I'm sorry, let me read that, reread that.

9 Second: That the defendant associated with the
10 criminal venture;

11 Third: That the defendant purposefully
12 participated in the criminal venture; and

13 Fourth: That the defendant sought by action to
14 make that venture successful.

15 For you to find the defendant guilty of aiding and
16 abetting false statement to a bank, you must be convinced
17 that the Government has proved each of the following beyond a
18 reasonable doubt:

19 First: That the offense of false statement to a
20 bank was committed by some person;

21 Second: That the defendant associated with the
22 criminal venture;

23 Third: That the defendant purposefully
24 participated in the criminal venture; and

25 Fourth: That the defendant sought by action to

1 make the venture successful.

2 "To associate with the criminal venture" means that
3 the defendant shared the criminal intent of the principal.
4 This element cannot be established if the defendant had no
5 knowledge of the principal's criminal venture.

6 "To participate in the criminal venture" means that
7 the defendant engaged in some affirmative conduct designed to
8 aid the venture or assist the principal of the crime.

9 1.26 Duty to Deliberate - Verdict Form

10 To reach a verdict, whether it is guilty or not
11 guilty, all of you must agree. Your verdict must be
12 unanimous.

13 It is your duty to consult with one another and to
14 deliberate in an effort to reach agreement if you can do so.
15 Each of you must decide the case for yourself, but only after
16 an impartial consideration of the evidence with your fellow
17 jurors. Do not let any bias, sympathy, or prejudice that you
18 may feel toward one side or the other influence your decision
19 in any way. In particular, do not let racial, ethnic,
20 national origin, or other bias influence your decision in any
21 way. During your deliberations, do not hesitate to reexamine
22 your own opinions and change your mind if convinced that you
23 are wrong. But do not give up your honest beliefs as to the
24 weight or effect of the evidence solely because of the
25 opinion of your fellow jurors, or for the mere purpose of

1 returning a verdict.

2 Remember at all times, you are judges - judges of
3 the facts. Your duty is to decide whether the Government has
4 proved the defendant guilty beyond a reasonable doubt.

5 When you go to the jury room, the first thing that
6 you should do is select one of your number as your
7 foreperson, who will help to guide your deliberations and
8 will speak for you here in the courtroom.

9 A verdict form has been prepared for your
10 convenience.

11 The foreperson will write the unanimous answer of
12 the jury in the space provided, either guilty or not guilty.
13 At the conclusion of your deliberations, the foreperson
14 should date and sign the verdict.

15 If you need to communicate with me during your
16 deliberations, the foreperson should write the message and
17 give it to the Court Security Officer. I will either reply
18 in writing or bring you back into the court to answer your
19 message.

20 Bear in mind that you are never to reveal to any
21 person, not even to the Court, how the jury stands,
22 numerically or otherwise, on the Indictment until after you
23 have reached a unanimous verdict.

24 And the foreperson at the appropriate time will
25 receive a copy of this verdict form, and they are responsible

1 for executing that document when you complete the
2 deliberation process, but there will only be one copy of this
3 verdict form.

4 All of you will receive copies of the jury charge
5 that I just read, and then there will be one copy of the
6 verdict form that will be maintained by the foreperson.

7 At this point, I will invite counsel to the bench
8 for a brief conference regarding the reading of the jury
9 charge, and then we will proceed to closing arguments.

10 (The following took place at the bench and outside the
11 hearing of open court.)

12 THE COURT: Okay. So under Rule 30, are there any
13 objections to the Court's reading of the jury charge --

14 MS. BURCH: No, Your Honor.

15 THE COURT: -- from the Government?

16 MS. BURCH: No, Your Honor.

17 THE COURT: Okay. No objection.

18 Okay. The Defendant, any objections to the Court's
19 reading of the jury charge?

20 MR. COGDELL: No, sir.

21 THE COURT: Okay. We may proceed to closing
22 arguments.

23 (The following took place in the hearing of open court.)

24 THE COURT: At this time, I've instructed the
25 attorneys that they may proceed to closing arguments. I ask

1 that you pay close attention.

2 Mr. Haag, Mr. Cogdell, you can proceed according to
3 the time intervals you presented to the Court.

4 **CLOSING ARGUMENT OF THE GOVERNMENT**

5 **MR. HAAG:** Good morning, Ladies and Gentlemen.

6 In a federal case, there's a tendency for the case
7 to quickly become more complex than it needs to be. When you
8 layer on top of that that the case is a white-collar case,
9 the complexity quickly can spin out of control.

10 You saw a lot of that over the last three days as
11 we've talked about Latin terms, cats and dogs and leases, had
12 a contracts professor, various sorts of topics.

13 What I want to do with my closing argument is try
14 and reorient us as to why we're here today and what we are
15 here to decide. With that in mind, let's talk about what's
16 at issue here.

17 Counts One and Two each charge Bank Fraud. These
18 are the elements. I'm not going to read them out loud. They
19 are listed in the jury charge. You may at your leisure
20 review those and read those.

21 Count Three is Making a False Statement to a Bank.

22 In accordance with the theme here of simplifying,
23 I'm going to try and condense those down into just a couple
24 of concepts and point out what you're looking for.

25 First, before we do that, let's talk about what's

1 not at issue. This is a stipulation. For both of these
2 counts, there has to be what's called a federal nexus. In
3 other words, the bank has to be insured by the Federal
4 Deposit Insurance Corporation. There's no question of that
5 here. You don't need to worry about that.

6 This is a fraud case. If you forget everything
7 else that I say here this morning, I ask you to please
8 remember and write down that statement. This is a fraud
9 case. A fraud case means, in short, a plan, pattern, or
10 course of action intended to deceive others, and that plan
11 involves a false representation, which includes the omission
12 or concealment of a material fact if it is made with the
13 intent to defraud.

14 Continuing with the simplification, if I had to sum
15 up this case in one sentence, it would be that the defendant
16 falsely represented to IBC Bank that the purpose of the loan
17 was money for the Reagor-Dykes Auto Group to operate when, as
18 he then and there well knew, he omitted the material fact
19 that he fully intended to divert \$1.766 million of the money
20 from his business to himself for his personal use and
21 benefit.

22 So the salient question, the relevant question why
23 you twelve are here today is to decide: Did the defendant
24 defraud IBC Bank?

25 In order to answer that question, we need to talk

1 about the time period. To assess that, we need to determine
2 the defendant's intent from early April 2017 when he and
3 other Reagor-Dykes Auto Group members met with IBC Bank up
4 until the time when they signed the loan agreement on
5 July 13th of 2017.

6 We've talked a lot about Government's Exhibit 4,
7 and that was the loan memorandum prepared by William
8 Woodring. And you've heard a lot from the Defense about,
9 well, Reagor-Dykes didn't sign it; the defendant didn't sign
10 it. That's not the point. It's not a contract.

11 The point is this: The loan memorandum was
12 prepared April 14th, 2017. The relevance and the key to
13 Government's Exhibit 4 is IBC Bank representatives went to
14 Lubbock. They met with the defendant. They met with
15 Reagor-Dykes representatives. They come back, and about a
16 week later, they write a document, almost contemporaneous
17 with that meeting, that sets out all of the representations
18 that were made to them. It is this jury's best evidence of
19 exactly what representations were made and exactly what the
20 defendant told IBC Bank when it made the decision to extend
21 the loan.

22 What was represented? Feel free when you go back
23 to the jury room to look at Government's Exhibit 4. This is
24 what's called the use of funds section. This is what we've
25 been referring to as the purpose of the loan. This is what

1 the defendant told IBC Bank as to why Reagor-Dykes needed a
2 loan.

3 What was represented? The entirety of the proposed
4 \$10,000,000 loan will be used to inject equity, or money,
5 into the Reagor-Dykes Auto Group. There were discussions
6 from the defendant about the remarkable growth of
7 Reagor-Dykes; that they were on pace for \$800,000,000 in
8 sales; that they had this new vision of sales; that they were
9 growing so fast, they needed money to keep up with that
10 extraordinary growth.

11 Due to the enormous growth, the borrower has been
12 forced to operate with a working capital position it believes
13 to be inadequate as company growth has eaten up excess cash
14 flow to that point. In plain English, the company is growing
15 so fast it needs cash for the company.

16 The proposed equity term loan — and that's what
17 we've been calling the working capital loan — provides an
18 immediate cash injection to RDAG, to Reagor-Dykes Auto Group,
19 for what? To sustain growth goals over the next 18 to
20 24 months and provides each entity with a sizeable cash
21 cushion.

22 In summary, what did the defendant tell IBC Bank?
23 Our company's sales are off the charts. We are growing so
24 fast that we have to have more money to sustain that growth,
25 to continue that growth, and to keep the company operating

1 with cash so that it can continue this extraordinary growth.

2 To further reinforce what was told in the meeting,
3 if you go to Page 25 of Government's Exhibit 4, they talk
4 about the actions that Reagor-Dykes took in order to improve
5 the cash flow or the actions it took to keep cash in the
6 company. One of those actions, the owners have eliminated
7 all withdrawals as of March 2017. In other words, what they
8 told IBC Bank is, the owners aren't taking money out of
9 Reagor-Dykes.

10 And here is why we're all here today, what was not
11 represented. What did the defendant not tell IBC Bank?
12 Didn't tell IBC Bank that he was only going to inject
13 6.67 million into Reagor-Dykes Auto Group, and that he was
14 going to pocket \$1.67 million of that loan for himself.

15 That information that's contained in Government's
16 Exhibit 4 was confirmed by IBC President and CEO Bill
17 Schonacher, former IBC President Will Woodring, and the
18 testimony of CFO Shane Smith.

19 Let's get to the next step in the fraud. May 31st,
20 2017, about six weeks before the closing of the working
21 capital loan on July 13th. So six weeks before that, before
22 anyone signed any contracts, this is where the defendant sets
23 out his plan to divert the proceeds intended for his business
24 to himself and to hide that fact from others at Reagor-Dykes
25 and to hide it from the bank. Government's Exhibit 41, one

1 of the documents that you should first look to, I suggest,
2 when you go back to the jury room because it very clearly and
3 very succinctly lays out the fraud scheme.

4 Again, much like Government's Exhibit 4, is the
5 most powerful evidence that you've heard in this case because
6 it was written six weeks before the signing of the loan
7 agreement. In other words, if you're trying to decide
8 someone's intent at a specific point in time, the best
9 evidence of that intent is, what did they write just prior to
10 the loan closing.

11 The first fact that I would ask you to look at was:
12 Who got Government's Exhibit 41? It went to Shane Smith and
13 Rick Dykes.

14 Shane Smith, I'm sure that after I'm done speaking
15 you're going to hear a lot about Shane Smith. Shane Smith is
16 the person that the defendant knew would follow his
17 instructions without question. Rick Dykes had 1.766 million
18 reasons not to question the defendant's instructions.

19 I'm going to bring up Government's Exhibit 42. As
20 I read this portion of the e-mail, I would ask, if in your
21 personal life you're a supervisor, think of it from this
22 point, or if you have a supervisor, think of it from that
23 perspective, but I want to read something, and, just as you
24 hear it, think about whether that's indicative of a normal
25 employee/supervisor relationship.

1 All I have worked toward, since you brought me
2 onboard day one, was to enrich your lives, build your net
3 worth, and have your back. I would protect you and my
4 family -- I'm sorry, you and your families with my life.

5 For whatever reason, Shane Smith had this
6 relationship with the defendant where he would do anything
7 for him, and, as you heard, he did.

8 Perhaps just as important as who got the e-mail,
9 who didn't get the e-mail? The e-mail didn't include Steve
10 Reinhart, Rachel Reagor, or John Thompson. Now, all those
11 three people are part of what's in Government's Exhibit 44 as
12 the Reagor-Dykes Automotive deal team, the one that the
13 defendant says, hey, we need to communicate openly, open
14 communication about this IBC loan.

15 And who importantly does he omit? Steve Reinhart
16 and Rachel Reagor, who are both in the legal and compliance
17 division of the Reagor-Dykes Auto Group. And, for sure, he
18 didn't include the IBC representatives to tell him what his
19 plan was.

20 And what could we draw from this? The defendant
21 shared his plan with the person he knew would blindly obey,
22 unquestionably obey, and the person who would not object. He
23 purposely omitted anybody who might at that point in time
24 come up to him and say: Hey, whoa, stop. You can't do that.
25 You've been telling the bank all along you need \$10,000,000

1 for your company. You can't suck that money out and use it
2 for yourself.

3 Diversion. You heard during opening statement that
4 the justification for the diversion was that the evidence
5 would show the defendant invested millions of dollars of his
6 own money into Reagor-Dykes, and he believed that he could
7 reimburse himself with the working loan.

8 What did the evidence and the truth show you? The
9 evidence that you heard from Shane Smith, who is responsible
10 for the capital raise, the defendant in March 2017 invested
11 \$500,000 of his own money. The defendant took 1.766 million.
12 And, more important, there's this argument that somehow the
13 defendant was repaying himself because Reagor-Dykes owed him
14 for personal money. It was the exact opposite. The
15 defendant owes Reagor-Dykes entities about \$5.4 million. The
16 proposed justification that he somehow needs to repay himself
17 is a sham, completely bogus.

18 Finally, perhaps the most impart the concealment.
19 How we are going to manage this capital is 100,000,000
20 percent, or whatever that is, confidential between us and is
21 not anyone else's business. Nobody's. No bankers, or anyone
22 else's. Our business. Game on. It's the only portion of
23 the e-mail that was bold. When you read Government's
24 Exhibit 41, you will readily see how it stands out. There's
25 a few key things to look at.

1 In voir dire, when we were talking about
2 determining intent, I gave you an example of a principal, and
3 one of the scenarios I gave you is, you know, what if the
4 person that allegedly punched the other student in the face
5 had told another classmate, hey, I'm going to go confront
6 this guy in the bathroom, but don't tell anybody. And it
7 encapsulates this common-sense principle that everybody in
8 this box understands, if you got to hide it, you probably
9 shouldn't be doing it.

10 What we are doing, what I am doing, how I am
11 telling you to divert the loan proceeds stays with us three;
12 nobody else; nobody else at Reagor-Dykes; nobody in legal;
13 nobody in compliance. Most important, no bankers.

14 Folks, he specifically points out no bankers. Ask
15 yourself this: If he really thought he could do it, why did
16 he need to point out, hide it from the bankers? He needed to
17 point out, hide it from the bankers, because he knew it was
18 wrong. He knew he had told the bankers the whole time, I
19 need money for the Reagor-Dykes Auto Group. And he knew that
20 taking a loan meant for the Reagor-Dykes Auto Group and
21 putting it into his mansion on 19th Street was a lie.

22 I'm going to play a couple of clips here. As I
23 play this next clip, I want you to just listen to it, and
24 then we're going to talk about some of the inferences and
25 conclusions that you can draw from what is said here.

1 **(Government's Exhibit 51 played.)**

2 **MR. HAAG:** The key portions of that audio tell you
3 the defendant's intent and his motive. For the defendant,
4 his self worth, his view of himself, how he sees himself is
5 directly tied to his wealth. Not just his wealth, but
6 showing that wealth, showing other people how wealthy he is.
7 In the defendant's mind, the more wealth that he has and
8 shows others, the better of a person he is, the better of a
9 salesperson he is. His self worth is locked to wealth and
10 the show of wealth.

11 And when you make wealth, when you make that beast
12 drive what you do, you have to feed that beast. That beast
13 is hungry, and that beast requires a lot of money, and it's
14 the motive for why the defendant diverted the money from the
15 IBC loan to himself.

16 The next clip that you're going to see is from
17 January 26th of 2018. This is -- the first IBC loan closing
18 was July of 2017. The second closing is February 26, 2018,
19 so this is going to be just about a month prior.

20 And there's no indication in the video that he's
21 specifically talking about the IBC loan, but I ask that you
22 listen to it and see, would it make sense if he was? I mean,
23 everything that he's saying here, is that really what we've
24 got?

25 **(Government's Exhibit 48 played.)**

1 **MR. HAAG:** People in that meeting may not have any
2 comprehension of what the defendant has pulled off, but you
3 certainly do. He convinces other people, IBC Bank, to give
4 him their money, so he can use their money to increase his
5 net worth.

6 For my final slide, I want to talk about
7 materiality. And I've saved this for the last slide because
8 I have a feeling it will come back on the rebuttal argument.

9 Materiality in plain English means: Did the lie
10 matter? And, just to be clear, the lie has to matter to IBC.
11 Okay. So you've heard a little bit of argument about, you
12 know: Hey, well, Reagor-Dykes, or Mr. Reagor, was the
13 guarantor, so, hey, who cares if he defrauded them out of the
14 money? That twists it, right?

15 The key is: Did it matter to IBC Bank, right? In
16 other words, would they have made the loan if they had known
17 he was going to use it for himself? It's not whether Mr.
18 Reagor is on the hook for the money. It's would they have
19 made the loan.

20 So Mr. Schonacher and Mr. Woodring were clear and
21 unequivocal. Mr. Woodring: I wouldn't even present this
22 loan if I had known he was going to take 1.76 million. Bill
23 Schonacher: That proposal, if it ever came to me, would have
24 been crushed; would not even have gone to the executive
25 committee, period, full stop.

1 And we'll go back to voir dire, right? Common
2 sense. In voir dire, I talked to you about a scenario where
3 your child had asked you for money, and your child said:
4 Hey, can I borrow \$20,000 to educate myself, perhaps get a
5 good job at Bell Helicopter, enrich my life, set myself up
6 for a future life of earnings? Well, that's a good
7 investment, right? That makes sense.

8 Your child comes to you and says: Can I have
9 \$20,000 to go to Vegas and live it up, see what happens,
10 whoo-hoo? No, not making that loan, right? You make the
11 first loan because there's a benefit, and you'll probably get
12 your money back. You don't make the second loan because
13 you're probably never going to get your money back, right?

14 You had the opportunity to observe Mr. Schonacher,
15 and I want you to recall at the end when I asked him, you
16 know: How did that loan default affect you? And you may
17 recall, his face turned red, and you could tell he was
18 agitated, and he told you, he said: You know, I'm the
19 president of that bank, and the depositors, the people just
20 like you that put money into the bank, they expect me to be
21 careful stewards with their money. They want me to be smart
22 with their money. They want me to make loans that make
23 sense, and I feel terrible because I got cheated. I made a
24 loan that didn't make any sense, and now I'm out \$22,000,000
25 that my depositors put in my trust.

1 Ladies and gentlemen, if you will look at what's
2 relevant here, fraud, you will find the evidence supports one
3 conclusion, and that is guilty. Thank you.

4 **THE COURT:** Mr. Cogdell, you may approach for your
5 closing argument and connect any technology.

6 **MR. COGDELL:** Yes, sir. May we approach on another
7 matter?

8 **THE COURT:** Yes, you may approach.

9 (The following took place at the bench and outside the
10 hearing of open court.)

11 **MR. COGDELL:** Mr. Haag, in his final argument,
12 argued that Mr. Dykes had 1.66 million reasons to not
13 question this transaction. He has clearly opened the door to
14 my being able to argue that Dykes received the exact same
15 amount of money.

16 **MR. HAAG:** I'm okay with that, Your Honor, because
17 it's -- I mean, it's in -- it's in Government's 41. I just
18 would ask Mr. Cogdell not to steer towards, well, why isn't
19 Mr. Dykes sitting next to Mr. Reagor?

20 **THE COURT:** So as long as you abide the other
21 paragraphs in the motion in limine --

22 **MR. COGDELL:** Yes, sir.

23 **THE COURT:** -- I'm fine, because they are business
24 partners, and his name was reflected in the loan agreement.
25 There are documents that the jury is going to have to review

1 that includes that partnership relationship, but please steer
2 clear of the Court's instructions on the allegations of
3 prosecution, non-prosecution, selective prosecution, and the
4 rest.

5 MR. COGDELL: I'll do my best (chuckles).

6 THE COURT: Okay.

7 MR. HAAG: You better.

8 THE COURT: All right. There you go.

9 (The following took place in the hearing of open court.)

10 THE COURT: Mr. Cogdell, you may proceed.

11 CLOSING ARGUMENT OF THE DEFENDANT

12 MR. COGDELL: Thank you. Good morning.

13 THE JURY: Good morning.

14 MR. COGDELL: Thank you. A verdict of not guilty
15 is not a dirty word. It does not mean that you like Bart
16 Reagor. It does not mean that you like the way he may have
17 treated people. It does not mean that you would have done
18 the same thing as he did.

19 What it does mean is that you believe that the
20 Government has failed to prove its case and each element
21 beyond a reasonable doubt. Nothing more, nothing less.

22 Let's begin at the beginning. This whole thing
23 called presumption of innocence. We tend to forget that
24 sometimes when we see emotional things played in court or
25 drama playing out in court, but every person charged in this

1 country is presumed by law to be innocent. The Indictment or
2 formal charge against Mr. Reagor is not evidence of his
3 guilt. Indeed, he's presumed by the law to be innocent. The
4 defendant begins with a clean slate.

5 The burden of proof is on the Government. We have
6 no proof. I could sit over there and go to sleep. It is not
7 my nature. It is not what I do, but I have no burden to
8 prove to you anything. They have the burden, and they have
9 the burden completely. The Government has the burden of
10 proving the defendant's guilty beyond a reasonable doubt, and
11 if it fails to do so, you must acquit the defendant.

12 A verdict of not guilty is not a leftist plot.
13 It's not a socialist uprising. It's the right thing to do
14 when the Government has failed to prove the allegations
15 beyond a reasonable doubt.

16 Proof beyond a reasonable doubt is defined. A
17 reasonable doubt is a doubt based upon reason and common
18 sense after a careful and impartial consideration of all the
19 evidence in the case. Proof beyond a reasonable doubt,
20 therefore, is proof of such a convincing character that you
21 would be willing to rely and act upon it without hesitation
22 in the most important of your daily affairs.

23 I flashed this up for you on Tuesday. It seems
24 like three weeks ago; it does not seem like Tuesday. And I
25 didn't really walk you through it, but the standard for

1 getting pulled over by the police is reasonable suspicion or
2 probable cause.

3 Preponderance of the evidence is that standard by
4 which civil cases are determined. When you hear about these
5 civil verdicts of hundreds of millions or billions of
6 dollars, it is preponderance of the evidence.

7 Clear and convincing evidence is the type and the
8 quantity and the sufficiency of evidence that, if CPS was
9 trying to take your child away or your grandchild away in my
10 case, they would have to prove by clear and convincing
11 evidence that I was an unfit grandparent.

12 Proof beyond a reasonable doubt is literally the
13 top of the heap. There is no higher standard. It is the
14 same standard, quantity, quantum of proof to convict somebody
15 of capital murder. It's as high as it gets.

16 Working capital isn't defined for you. Isn't that
17 ironic? The two most important things we have in this case,
18 one is not defined, working capital, and one is. Proof
19 beyond a reasonable doubt is defined for you. Proof beyond a
20 reasonable doubt is not a four-letter word. There's nothing
21 wrong with saying it, and a verdict of not guilty is not a
22 four-letter word. There's nothing wrong with saying it. If
23 they haven't convinced you, it should give you no problem in
24 returning a two word verdict. It's not a bad thing. In
25 fact, it's exactly the right thing when the Government has

1 failed to produce the evidence that convinces you beyond a
2 reasonable doubt.

3 Reasonable doubt. Again, this definition: Proof
4 of such a convincing character that you would be willing to
5 rely and act upon it without hesitation in making the most
6 important decisions of your daily affairs.

7 Let me walk you through a few examples. Let's just
8 say you are considering getting on a Southwest Airlines,
9 Southwest Airlines flight, and you walked up and you heard:
10 Good afternoon, ladies and gentlemen, your pilot today is
11 Shane Smith. Would you hesitate to get on that plane? I bet
12 you would.

13 You're trying to see if a parent, a loved one needs
14 care at a director of -- at an Alzheimer's facility, and you
15 were informed that Shane Smith was the director of the
16 Alzheimer's facility. You think you would have some
17 hesitation before you put your parent there? I think you
18 would.

19 Shane Smith's -- you needed a cardiologist
20 appointment. You had -- let's just say last Monday you were
21 at your home, and you thought you had a cardiac event, and
22 you went to your cardiologist, and you saw that Shane Smith
23 was an assistant to your cardiologist. Do you think you
24 might find another cardiologist? I think you might.

25 There are two ways to try cases. They tried it one

1 way; we tried it another way. We learned back in law school
2 that, if you don't have the facts, try it on emotion. If you
3 do have the facts, try it on the facts.

4 Now, why do you think one of the first things we
5 see is this e-mail about, don't tell anyone; keep it between
6 us, oh, my God? It gets you emotionally stirred up. Why do
7 you think we just heard in his final argument -- he's a good
8 lawyer. I respect him. I'm not begrudging him for engaging
9 in theatrics. That's what lawyers do. But what difference
10 does it make in terms of whether or not Bart Reagor committed
11 fraud if he's a pompous braggart? He either committed bank
12 fraud or he didn't. It's pretty binary.

13 If he pumps himself up and says, look at my
14 mansion, look at my planes, look at what a bad ass I am, that
15 may make him somebody that's -- you're going to sit at the
16 far end of the dinner table on Thanksgiving, but that doesn't
17 mean he committed bank fraud.

18 In fact, if you listen to the words closely in that
19 emotional speech, he says over and over: I don't need to
20 cheat. I do things the right way. But they're not playing
21 it for that purpose. They're playing it to get you upset.
22 It's their right. It's their choice. It's their decision.

23 But him telling the world -- and he knew these
24 things were being recorded. Okay? This was not a secret
25 recording where they caught him unprepared or unsuspecting.

1 He was the one making these recordings. Okay? And,
2 generally speaking, if you're planning to commit fraud, you
3 don't record yourself bragging about committing fraud.

4 They think he's more financially astute than I do,
5 but you'd have to be — no offense, my friend — dumber than
6 a bucket of hair to record yourself bragging about intending
7 to commit fraud. That's beyond guilt.

8 I'm a bad mother-f'er. I'm so good I don't need to
9 cheat. You know how I got rich? By making other people
10 rich. OP money. Other people's money. When you don't have
11 money, you talk the other people into giving you their money.

12 You know, as I said the other day, if I sold you my
13 watch and you paid me, I'd be getting paid with other
14 people's money. If I sold you my car and you paid me, I'd
15 get paid with other people's money. When my law firm writes
16 me a check — hopefully, they will when I get back to town —
17 I will be getting paid with other people's money.

18 That's nothing evil. That's nothing dire. That's
19 nothing hateful. That's just a slang word for, that's how
20 you get money. That's not evidence of bank fraud. That's
21 not evidence of intending to commit a crime. That is not
22 evidence of engaging in scheme. That's a salesman pumping up
23 his troops.

24 The checks we saw for 207,000 to Annette Reagor
25 for -- hold on, 132,000. There's been an inference all along

1 that he had to have this money to live his lifestyle. One of
2 the last slides I'm going to show you is, this was just
3 another day at the office in terms of when he deposited these
4 funds into his personal account. He was not a man of lacking
5 in means. We'll show you their exhibits where his annual or
6 his monthly average in his checking account was somewhere
7 between a half a million and a million dollars. He's not
8 living on the street hand to mouth.

9 But they show you these checks because you and I
10 don't get checks like this. I don't get to write my wife a
11 check for \$132,000. I don't get to write a check to the home
12 company for \$200,000. Those are big boy checks that most of
13 us don't ever see. Does that mean he committed bank fraud?
14 No.

15 Once again, they want you to get angry; they want
16 you to get upset; they want you to get jealous; they want you
17 to think, you know, he must have done something wrong because
18 he can write those big checks. That's why they are showing
19 you those checks.

20 They have had three years to investigate this case,
21 three years. And this is the sort of proof we see? I'm a
22 bad MF? This is their proof? Checks that were obtained,
23 funds that were obtained legitimately and appropriately.
24 This is the proof? This is the sort of stuff that's supposed
25 to convince you beyond a reasonable doubt? Nonsense.

1 Problem, yeah.

2 We don't convict people in this country because we
3 dislike them. You may dislike Bart Reagor. That is your
4 prerogative. You may find him to be an overbearing braggart.
5 He's not. Pretty decent man when you get to know him, but if
6 you don't want to like him, totally cool. He's not on trial
7 for being likeable or not.

8 But you may not convict him simply because you
9 dislike him. That is not the law. That is not this country.
10 That is not Amarillo, by God, Texas. We don't convict people
11 of federal felonies because we don't like them, because we
12 find them offensive, because we find them a braggart, because
13 we find them a know-it-all. We convict them only if, and
14 only if, the Government has proved its case beyond a
15 reasonable doubt, and it has completely failed to do so in
16 this case.

17 Facts? Professor Snyder yesterday. And he wants
18 to make this complicated. Actually, Professor Snyder made it
19 uncomplicated. He sat there on that stand -- and I'll give
20 you, he's a little bit of a quintessential, absent-minded
21 professor. You know, that's the way he rolls. But he wants
22 to make a deal about how much money Frank Snyder got paid,
23 \$600 an hour, maybe have 24 hours.

24 They paid their expert, Mr. Dawson, \$120,000.
25 Their expert will be get paid three or four times -- twice

1 what -- three or four times what both of our experts will get
2 paid for.

3 But if you believe what Frank Snyder told you,
4 Professor Snyder told you — good God, you're an Aggie law
5 professor — you have no choice but to acquit Bart Reagor,
6 because what he told you — went through his qualifications;
7 he observed the entire trial — there was no evidence that
8 there was a default. Unless taking those funds under the
9 contract triggered a default, there was no crime. No
10 evidence that Bart taking the funds would trigger a default.

11 Working capital. And I'm going to go to, oh, Bart
12 told them working capital; he was going to use it for working
13 capital. Guess what? Working capital can be used to pay the
14 owners for their investments. It is a recognized use of
15 working capital. That's what that man swore to under oath.
16 If you believe Frank Snyder, it's over. Frankly, even if
17 Frank Snyder only raises a reasonable doubt, the game is
18 over, and you have a duty to acquit Mr. Reagor.

19 7.12 is a specific consent by the bank to utilizing
20 the distributions to pay the owners. That's legally
21 gobbledygook for the contract said he can do it.

22 My favorite question just opened the door yesterday
23 and was prompted by a question raised by Mr. Haag. You
24 didn't recognize [sic] Mr. Reagor back in 2017, did you,
25 Professor Snyder? No, I did not. And my -- my large Robin

1 to my Batman, Mr. Norris, said: Well, professor, if you had
2 advised Mr. Reagor back in 2017 about taking the
3 distributions, would you have told him to take them? And
4 what did he say? Go ahead.

5 Now, I don't know if you saw the reaction to the
6 Government, but that was a kill shot right between their eyes
7 when the professor said that, absolute kill shot, game over.

8 Steven Fried, the older fellow, did thirty years of
9 banking in the LA area, usually assisting the banks, saw the
10 entire trial testimony, saw Schonacher, Hutchison, and
11 Woodring. From a banker's perspective, he agreed with
12 Snyder's conclusions. There were no negative covenants, and
13 he -- it's not that hard, but we have every right to put on a
14 defense, and we did. There were no negative covenants that
15 precluded using the funds in this manner. And on the day
16 that the funds were deposited in the RDAG account, they had
17 the discretion to use the funds as they desired. Acceptable
18 to use the funds as working capital to reimburse
19 contributions. And we'll get to the contributions.

20 You know what happened yesterday after we rested
21 our case? Nothing. You know why that's important? Because
22 after -- we don't have to put on a defense, but after the
23 Defense puts on a defense and we rest, they have a right to a
24 thing called rebuttal. And what rebuttal means, they can put
25 on anyone, everyone, and anything, and everything from this

1 witness stand to rebut what we just put on in the defense.

2 What did you see yesterday after we rested our
3 case? You saw, in the words of Paul Simon, the sounds of
4 silence. They put on nothing. That's a clue, because Mr.
5 Dawson, one of their experts, was sitting right behind Mr.
6 Haag. If Mr. Dawson had a contrary position or if any
7 witness in the entire world had a contrary position to the
8 testimony of Mr. Snyder and Mr. Fried, the Government could
9 have had not only the right, but the obligation, because they
10 have the burden of proof to put on the rebuttal witness.
11 They put on their coat and went home.

12 That right there is a huge moment. They're going
13 to belittle. They're going to say, it doesn't matter. These
14 are paid prostitutes of witnesses, and they're stupid. He
15 said stupid things. You can't believe -- you know what? If
16 that's your position, Mr. Haag, you have the burden of proof,
17 where's Waldo? Where was your rebuttal witness? There was
18 no Government rebuttal witness.

19 Dawson was in the courtroom sitting right behind
20 the Government.

21 Nick, I'm at nineteen minutes. Would you give me
22 just in five-minute in -- he can't talk. In five-minute
23 increments, give me one at twenty-five, thirty, and so on.
24 Okay?

25 **MR. NORRIS:** Okay.

1 **MR. COGDELL:** The bottom line: If you even have a
2 reasonable doubt that working capital can be used to repay
3 owners for their investment, you must return a verdict of not
4 guilty. Let me say that again. Even if you have but a
5 reasonable doubt under this contract that working capital can
6 be used to repay owners for their investment, you must return
7 a verdict of not guilty.

8 Better yet, if you have even a reasonable doubt
9 that Bart Reagor believed he could use the proceeds of this
10 loan to repay himself with working capital, you must return a
11 verdict of not guilty.

12 He keeps going on about the lie, the lie, the lie.
13 He made an application to the bank knowing that he was going
14 to use some of the proceeds to pay himself back. It's not a
15 lie. There is absolutely no proof that Bart Reagor did not
16 believe that he could use portions of those loan proceeds to
17 pay himself back.

18 In fact, he sent an e-mail to Rick Dykes, who I
19 suggest to you, also, it's pretty clear Mr. Reagor's not the
20 only one that got the 1.66 million. Who else do you think
21 did? Who else? Rick Dykes. Let me say that again. Mr.
22 Dykes got the exact same amount of money as Bart Reagor; Rick
23 Dykes.

24 Mr. Reagor believed that he could, in fact, repay
25 himself; presumably so did Mr. Dykes. He believed that he

1 could repay himself with some of these funds, not all, but
2 some of these funds.

3 In my opening statement, I told you the IBC loan
4 language actually allowed for these distributions. They did.
5 Reagor took distributions to reimburse himself for the money
6 he put into his company. He did. That's what the evidence
7 has shown.

8 Reagor was personally liable on the note, is what I
9 told you in opening statement. He was.

10 The Government's loan witnesses, my favorite was
11 Schonacher, president of the IBC Bank. He was humiliated.
12 He was upset, understandably so.

13 Guess who never read the loan agreement that
14 they're prosecuting Mr. Reagor for? Yeah, that guy. And
15 what Mr. Schonacher told you from that witness stand in my
16 last couple of minutes with him was: Did you ever read the
17 loan agreement? No. Now, how in the world does that make
18 any sense?

19 They are trying to prosecute him for a federal
20 felony for committing loan fraud, and one of their very first
21 witnesses, the victim, has never even read the very loan
22 agreement that he's being prosecuted for. It just makes you
23 scratch your head.

24 Woodring, he couldn't even articulate a common-
25 sense explanation as to why the loan distributions weren't

1 allowed. Well, they told me it was for working capital.
2 Okay. Okay. Because Mr. -- Mr. Reagor believed that the
3 loan allowed him to reimburse himself. And we'll get to why
4 exactly he believed that.

5 In fact, their star witness, what star he was,
6 Shane -- Shane Smith gave him every reason to believe it.

7 Dawson, he didn't even comment on the particulars
8 of the loan agreement. I don't even know what he -- it was
9 yes, yes, yes, yes, yes. He's been paid \$120,000 to give
10 monosyllabic responses to questions by the Government that
11 really don't move the needle, move the ball either way.

12 What the evidence has shown? Bart Reagor committed
13 no crimes.

14 How much time, Nick?

15 **MR. NORRIS:** Twenty-five.

16 **MR. COGDELL:** Left?

17 **MR. NORRIS:** Twenty left.

18 **MR. COGDELL:** Twenty left.

19 Bart Reagor committed no crimes and is, in fact,
20 not guilty of these charges. He did not commit bank fraud.
21 He did not make any false statements to anyone at IBC Bank.
22 He always believed he could use the funds exactly as he did,
23 and Bart's CFO replied awesome when he sent him the
24 instructions.

25 There's no evidence of anyone telling Reagor, you

1 can't do this. Let me repeat. There is no evidence, none,
2 of anyone telling Bart Reagor, you can't do this.

3 The all-cap e-mail. Even Shane Smith told you, he
4 always uses all caps. Let's go to lunch, exclamation point.
5 Today is Wednesday. The Texas Tech Raiders are playing.
6 Everything is used in all caps. There's nothing unusual
7 about that.

8 He first sent an e-mail to his capital partner,
9 Rick Dykes, stating his intention. Reagor believed Dykes
10 agreed with him. Reagor then sent the directions to Smith.
11 And Reagor wanted privacy for business reasons. Don't tell
12 anybody does not mean I am committing a crime. If I'm
13 committing a crime, I'm not going to put it in an e-mail. He
14 wanted privacy, because he didn't want the word out with
15 everybody in Lubbock and with everybody in his company and
16 with all the other bankers.

17 Don't tell the bankers. How many bankers do you
18 think he has? Dozens. Why in the world would he want one
19 banker to know what he's doing with another banker? Again,
20 that's dumber than my third marriage. There is no reason in
21 the world why you would want one banker to know what you're
22 doing with another banker. It makes no sense. I'm happily
23 married now.

24 Reagor had no reason to believe that RDAG was in a
25 poor state. In fact, his dealerships were selling cars at

1 astronomical rates, unbelievable rates. The RDAG dealerships
2 were in the top ten in the country, sometimes higher in
3 multiple categories. He had received numerous awards.

4 Shane Smith told us essentially all of that. They
5 were rocking and rolling.

6 Reagor-Dykes personally invested their own funds
7 into RDAG after the '17 audit. This is before the funding of
8 the IBC loan. Bart believed the dealerships were still in
9 great shape based on Smith's representations. Reagor
10 believed that by so investing his personal funds he had the
11 right under the loan agreement to reimburse himself for these
12 funds.

13 If he believed this, he's not guilty. There is no
14 bank fraud. If he believed he could do this under the loan
15 agreement, there was no bank fraud. It's their burden to
16 prove to you he didn't believe it. He couldn't believe it.
17 There is no evidence of that. The evidence is to the
18 contrary.

19 Bart and Rick put significant personal money into
20 RDAG. Mr. Haag showed you a \$1,000,000 number. If you'll
21 look further -- what e-mail is that?

22 MR. NORRIS: 41, Government's 41.

23 MR. COGDELL: Government's Exhibit 1?

24 MR. NORRIS: 41.

25 MR. COGDELL: 41, which he didn't go down, Reagor

1 describes much more money. 3.1 being -- or 3,000,000 being
2 deposited from his Zurich account. 2,000,000 from an RDAG
3 entity.

4 The suggestion by Mr. Smith that these weren't
5 personal funds, Reagor and Dykes owned the businesses
6 50 percent. If I own the business and I take money out of
7 that business, it's my money. 2,000,000 taken to be used at
8 RDAG, another 1,000,000, and that left 2,000,000 for usage at
9 RDAG. There was a lot more money than you were led to
10 believe were deposited.

11 All right. So here it is. As an offset for our
12 risk and equity dilution and to keep reserves off the table,
13 Rick and I have decided -- Rick and I, same guy that got the
14 same amount of money, have decided to pay ourselves the first
15 third of every dollar we borrow against equity for capital,
16 so we maintain strong personal leverage. 33 percent of all
17 loan proceeds will be split between Bart Reagor and Rick
18 Dykes as a personal equity offset reserve. Doing this will
19 help us replenish already injected capital and will also
20 reward us for personal guaranties, which dilute our personal
21 equity in the RDAG.

22 What does that mean? They are personally on the
23 line. If any of these loans fail, they are personally
24 liable. It is not just the banks. I'm sorry. It is just
25 not the car dealerships that are on the line. It is

1 literally their wallet. Reagor is not a banker. He's not a
2 lawyer. He's not an accountant.

3 He heavily relied on Smith. He's a car salesman,
4 not a -- he built a 700-person company on trust and
5 delegation. He expected his employees to do their job. He
6 trusted Smith expressly on finance matters. Smith betrayed
7 Reagor's trust in the worst possible ways.

8 How much time?

9 **MR. NORRIS:** Fifteen.

10 **MR. COGDELL:** Fifteen.

11 **MR. NORRIS:** Remaining.

12 **MR. COGDELL:** Oh, the irony. Here you are sitting
13 as Bart Reagor. You don't have to bake him a cake or send
14 him one for Christmas, but just put yourself in his position.
15 He's worked for more than a decade developing one of the
16 strongest car dealerships on the planet, and one man that he
17 relied upon most, in fact, probably relied upon more than
18 anyone else, who single-handedly -- I think it's pretty clear
19 to you; it was not the conduct of Bart Reagor that caused the
20 implosion of Reagor-Dykes. It was the conduct of their star
21 witness, Shane Smith.

22 So here you are watching your former best friend,
23 who has not only destroyed your company that was worth many,
24 many, many, many millions of dollars, astronomically more
25 than the 1.6 we're discussing here today, you watched the man

1 who's destroyed your company come in and testify against you
2 to reduce his possible sentence.

3 I mean, where are we in this country when that's
4 the right process? Look at who he lied to. Ford Motor
5 Credit, FirstCapital Bank & Trust, AimBank, FirstBank. He
6 lied to anybody and everybody. He lied to his friends and
7 his family, his wife, his family, his child.

8 Reagor trusted him. He got up there and said, Bart
9 trusted me exclusively. I'm not suggesting to you that he
10 was entirely untruthful, but I am suggesting to you that you
11 cannot base your conviction based upon what the Government
12 wants him to say.

13 After they send this e-mail, what does he reply?
14 This is the CFO that he sends, hey, I want to do this. He
15 gets up on the stand and says, oh, I was at home, and I was
16 frustrated, and I wanted more of the money. Awesome.
17 Awesome. Awesome. He's the CFO. It is the CFO's job
18 description to say: You can't do that, dude. No. You can't
19 do that. And you know why he didn't say, no, you can't do
20 that? Because he had been engaging in a massive fraud scheme
21 with the floor plan and the check-kiting, and he couldn't
22 tell Bart no, not because he was afraid of Bart. That's
23 nonsense. Not because he was afraid to disappoint Bart.
24 That's nonsense.

25 If he told him no, Bart would have said: Why not?

1 We're in a great capital position. Let me see the documents.
2 Let me see the papers. If he would have told him no, it
3 would have come unwound right then and there to a man who's
4 making \$800,000 a year.

5 Do you think he puts all this sugar and love
6 because he's following the command of a man he's afraid of?
7 Nonsense. He puts this sugar and love to continue to sucker
8 punch the very man that put him in the position to make
9 \$800,000 a year. And they want you to rely on that man.

10 Dykes and Reagor enter into a loan agreement. They
11 absolutely believe the financial disclosures were accurate.
12 Smith is the person who led the discussions. At no time did
13 Reagor ever ask Smith to submit false financials. Even Smith
14 tells you that.

15 They want you to convict him of bank fraud and
16 submitting false financials when even their star witness
17 says: Bart Reagor never asked me to submit false documents
18 to IBC. That's their witness. Their witness disproves
19 Bart's guilt. Unless they submitted perjury, which I'm not
20 accusing them of, their witness acquits Reagor.

21 Bart did not knowingly lie to IBC, make a false
22 financial statement or commit bank fraud.

23 The facts. The IBC loan actually allows the
24 distributions. Reagor took the distributions to reimburse
25 himself for money he put into his company. He was personally

1 liable on the note. Dykes did exactly the same thing. Again,
2 Rick Dykes got the exact same amount of money as Bart Reagor.

3 Wild success, twenty-one dealership rooftops, 700
4 full-time employees, multiple franchises, exponential growth,
5 740,000,000, \$800,000,000 all destroyed, all destroyed by
6 this guy. Just blew it up like dynamite, and he's their
7 witness.

8 Where are we in this country when that is the
9 process we go through, honestly? When did we start rewarding
10 people for that kind of mayhem, that kind of financial
11 cancer, that kind of hellish activity that we reward him for
12 trying to convict Mr. Reagor who built a company, and the man
13 who destroyed it is trying to benefit off of it? That's just
14 as wrong as it can possibly be.

15 Again, you may not dislike -- or you may not like
16 Bart Reagor, but that whole pyramid is turned upside down for
17 the Government to seek to benefit effectively a career
18 criminal who has destroyed my client's business
19 single-handedly by testifying falsely against him. Nonsense.
20 Nonsense.

21 Smith lied to everyone, every single person on the
22 planet. Look, can you imagine the cancer he has caused?
23 What do we have? One, two, three, four, five, six, seven,
24 eight, nine, ten, eleven, twelve, thirteen. I'm not going to
25 tell you whether these people were criminally prosecuted or

1 not. I'll leave that up to you. I think you could make a
2 reasonable deduction that some of them were.

3 But to inject and infect and corrupt that many
4 people tells you all you need to know, not only about Shane
5 Smith, but about this process. It's simply wrong. It ain't
6 right. It ain't right. He's a horrible human being, who
7 Reagor, bless his heart, relied on for Smith's financial
8 reports.

9 How much time, Nick?

10 **MR. NORRIS:** You've got seven minutes.

11 **MR. COGDELL:** He relied and IBC relied on those
12 financial statements. And the Government will ask you to
13 rely on him.

14 Every entity or person that has relied on Shane
15 Smith has gotten cancer one way or the other, has been burned
16 one way or the other. He was burned by him. Those fourteen,
17 eighteen people I just discussed were burned by him. Ford
18 Motor Credit Company, all the banks were burned by him. Bart
19 Reagor sure as heck was burned by him. And if you rely on
20 him, you're going to get burned by him too. That's not the
21 way we prosecute people in this country. It's just not.

22 That process, that ask or that request by the
23 Government should give you pause. It should cause you to
24 hesitate to act in the most important of your daily affairs.

25 If you look at it through the window of reasonable

1 doubt and the definition of proof beyond a reasonable doubt,
2 that alone, Shane Smith is walking reasonable doubt. Those
3 were fake. The financials were fake. The Government's going
4 to ask you to rely on him.

5 The loan agreement, again, I'm not going to beat
6 this up because you've seen it, but this loan agreement
7 allowed for the distributions unless there was a default or
8 event of default would exist. It had always allowed
9 distributions.

10 I put battle of the experts for this reason: They
11 put on some experts. We put on some experts. Guilt in
12 criminal cases or innocence in criminal cases shouldn't come
13 down to a battle of the experts. They do unfortunately,
14 because if the Government puts on an expert, I'm probably
15 going to get sued for malpractice if I don't put on an
16 expert. But when four different experts have very different
17 opinions, how in the world is a car salesman, albeit God's
18 own car salesman down there, how in the world is he supposed
19 to figure it out?

20 Frank Snyder, again, no evidence that Bart's
21 taking the funds would trigger default. Working capital,
22 funds are received into the company paying for the owners for
23 their investments, a recognized use of working capital.
24 7.12, a specific intent. If he had been asked by Reagor back
25 in 2017 if he could use the funds, he would have told him, go

1 ahead. Steven Fried same, same, same, same, same.

2 Knowingly. Two counts of bank fraud, one count of
3 making false financial statements. Both require specific
4 mental requirements. The Government has the burden of
5 proving the corrupt intent of Bart Reagor beyond a reasonable
6 doubt. The Government has failed. It's not close. This is
7 not a close question.

8 Bank fraud. The defendant knowingly executed a
9 scheme or artifice. Bank fraud. Knowingly is done
10 voluntarily, intentionally, and not because of mistake or
11 accident.

12 You may find that Bart was wrong. I don't think
13 you should. I don't think you will. But you may find that
14 Bart was wrong when he believed, as he did, that he could
15 repay himself with some of these loan proceeds, but even if
16 he was wrong about it, he's still entitled to a verdict of
17 not guilty. There is no evidence, none --

18 How much time?

19 **MR. NORRIS:** Three minutes.

20 **MR. COGDELL:** There is no evidence that Bart
21 knowingly submitted a false statement. There's no evidence
22 that Reagor intended to fraud anyone.

23 All the evidence is that Bart believed he had the
24 right to take the loan proceeds to reimburse himself. Based
25 upon his reliance on Shane Smith, Bart believed he had the

1 right to do what he do -- he had a right to do what he did,
2 and keep it a secret is far different than committing a
3 crime. He didn't want the entire world to know. He didn't
4 want the other bankers to know. He has a right to keep
5 financial decisions private, just like you do, just like I
6 do, just like you do. The world doesn't need to know about
7 my finances. The world doesn't need to know about your
8 finances. You have a right to keep them private, period.

9 False statement to a bank; he knew the statement
10 was false. There is no evidence that the loan application
11 contains false statements. He never submitted the statements
12 to IBC. Shane Smith did. Even Shane Smith said Reagor never
13 asked him to submit false financials.

14 Reasonable doubt. Proof of such a convincing
15 character that you would be willing to rely upon it and act
16 without hesitation in the most important of your daily
17 affairs. Reasonable doubt as to each offense. There's no
18 evidence of intent to defraud a bank. There's no evidence of
19 submitting false statements to financial institutions.
20 There's no evidence that Reagor lied, was knowingly involved
21 in a scheme to defraud. All credible evidence is to the
22 contrary.

23 He needed money for his mansion. That's been an
24 unspoken theme. This is Government's what, 50?

25 **MR. NORRIS:** 32.

1 **MR. COGDELL:** 32. Okay. Here's the spike. We got
2 the money back in March. He's a million, a million five, two
3 and a half, a million five, three, half million, half
4 million, half million, half million, a million. He got more
5 money than I got. Got a lot more money than I got.

6 He didn't do this because he was living hand to
7 mouth. Their own exhibits show it. That is one exhibit
8 concerning their checking account.

9 I suggest to you a reasonable deduction from the
10 evidence is they had money in other resources other than that
11 one checking account.

12 Would I have done what Reagor did? Monday morning
13 quarterback. You might get back --

14 How much time, Nick?

15 **MR. NORRIS:** One.

16 **MR. COGDELL:** Oh, this is not a Monday morning
17 quarterback deal where you go back there and say, well, I
18 would have done it differently. What has the evidence shown?
19 Reagor is not guilty on all counts.

20 It does not mean you like Bart Reagor. It does not
21 mean you like the way he may have treated people. It does
22 not mean you would have done the same thing. It does mean
23 that you believe that the Government has failed to prove its
24 case beyond a reasonable doubt. Nothing more, nothing less.

25 Bart Reagor, his dealerships have imploded because

1 a man he trusted and loved, the same man that has caused
2 horrific damage to countless people, has been charged with a
3 federal offense for a crime the evidence shows he didn't
4 commit.

5 I'm going to sit down now, and in a couple of
6 minutes, the prosecutor, I'm sure, is going to make some fine
7 remarks. And, as a lawyer, you always make mistakes, and I
8 know I've made a number of mistakes in this case, and if I
9 have, you hold them against me.

10 But I am giving you a father, a grandfather, a
11 husband, and a man who created great opportunity for, oh, so
12 many people. I've done all I could have done. So has Nick,
13 so has Matt, so has Tray. We have done all we can do for Mr.
14 Reagor.

15 I'm going to give him to you now. I'm giving him
16 to you, and to you, and to you, and to you, and to you, and
17 to you, and to you. You two, I can't because you're
18 alternates. To you, you, you, you, and you. Give him back
19 to me. He is not guilty of these crimes. He's not guilty.
20 Give him back to me. Thank you for your time.

21 **THE COURT:** Okay. Mr. Haag, you may begin your
22 rebuttal, and then I will afford you two extra minutes just
23 because I let it run a bit long.

24 **MR. HAAG:** Yes, Your Honor. May I have just one
25 minute to set some things up?

1 THE COURT: Absolutely.

2 (Pause.)

3 THE COURT: Mr. Haag, you have seventeen minutes.

4 FINAL CLOSING ARGUMENT OF THE GOVERNMENT

5 MR. HAAG: Thank you, Your Honor. This is going to
6 be really anticlimactic. It's hard to follow that.

7 The Defense's strategy in this case is something
8 that I like to think of kind of like when you were a child,
9 and you used to do those mazes. You remember those? And the
10 way I see it is, the jury, you're right over here, and as
11 with all juries, you are trying to find a path to the truth.

12 And what the Defense in this case is, is they want
13 to send you down here (indicating), maybe over here
14 (indicating), maybe in here (indicating).

15 MR. COGDELL: Excuse me. I object to attacking the
16 character of the --

17 THE COURT: Overruled. I allowed for aggressive
18 and zealous advocacy in your closing and much voice
19 modulation. I will allow it in the rebuttal. So overruled.

20 Please proceed, Mr. Haag.

21 MR. HAAG: Over here (indicating), over here
22 (indicating), over here (indicating), because there's a
23 tendency to equate confusion with reasonable doubt.

24 And the Defense's strategy is if they can confuse
25 you enough, then you'll come back not guilty.

1 **MR. COGDELL:** Same -- for the record, same
2 objection, Your Honor.

3 **THE COURT:** Okay. I will grant you a standing
4 objection on this point, but I didn't permit interruptions in
5 either of the closing arguments, and I'm not going to
6 tolerate many more interruptions in Mr. Haag's rebuttal.

7 **MR. COGDELL:** I did not intend to interrupt. I
8 intended to preserve objection, Your Honor.

9 **THE COURT:** Okay. It is preserved. You may
10 proceed.

11 **MR. HAAG:** Thank you. And let me give you an
12 example of what I'm talking about. Shane Smith can't be
13 trusted. You probably heard ten minutes of the Defense
14 talking about Shane Smith.

15 I mean, let's put Shane Smith in context. From the
16 Defense's opening, you would think he was the only witness
17 that was going to testify in this trial. As far as his
18 testimony, that is completely within your purview. I'll let
19 you evaluate his testimony and whether you believe that
20 testimony or not.

21 But let's be fair about really what relevance did
22 it have in this trial. Candidly, it's supplemental to the
23 fraud charge.

24 As to the fraud, Bill Schonacher, Will Woodring,
25 the IBC loan memorandum, and the defendant's e-mail,

1 Government's 41, that's the center of our case. That's the
2 key witness. That's the key evidence. Shane Smith's role,
3 he executed the plan that the defendant devised. That's it.

4 The Defense wants to paint him as some sort of the
5 centerpiece of our case or the key witness. He just did what
6 the defendant told him to do. That's it.

7 So Professor Snyder. And I'll talk briefly about
8 rebuttal. Mr. Cogdell suggested that that was a key moment
9 that the Government didn't do rebuttal. And kind of going
10 back to the maze, there was no rebuttal because I didn't want
11 to follow Defense down the rabbit holes or off into the side
12 or off into all of these matters that are irrelevant, so I
13 didn't.

14 So let me explain to you what I mean by that.
15 Professor Snyder, he talked about contract interpretation for
16 the loan agreement. I would love to summarize his testimony,
17 but, candidly, I didn't understand it very well, but I think,
18 in general, he was saying the loan agreement allowed it.

19 And you remember during opening I told you, if
20 you'll please just remember two things, this is a fraud case.
21 This is a fraud case.

22 Two, materiality. So here is why really whatever
23 Professor Snyder said is just, I mean, candidly not relevant
24 as to why you are here. The fraud occurred from April 2017
25 up until they signed the loan agreement. Whether it violated

1 the terms of the loan agreement, that's a breach of contract
2 issue, completely irrelevant to fraud; it has no bearing at
3 all.

4 In fact, the Government's position is, because of
5 the fraud, there never should have been a loan agreement.
6 The only reason the defendant got that loan was by fraud. He
7 told IBC Bank he needed money to operate his dealerships.
8 That was a lie because it omitted the material fact that he
9 intended to take the money for himself. And we talked about
10 materiality. Bill Schonacher told you: This never should
11 have happened.

12 Whatever Professor Snyder, Mr. Fried want to talk
13 about on the contract, it's irrelevant. It has nothing to
14 do. The fraud was in obtaining the loan from the beginning.

15 So, regardless of what the loan agreement says, the
16 United States' position is, there never should have been a
17 loan agreement. If the defendant had been honest and told
18 IBC Bank how he was truthfully going to use the money,
19 there's nothing for Professor Snyder to interpret. There's
20 no agreement.

21 Same thing with Mr. Fried. Now, I will say his
22 testimony was somewhat unique. His opinion was that, once
23 the bank loans you money for working capital, you can do
24 whatever you want with it. You can even take 10,000,000 and
25 go to Vegas, if you want. I'm not sure what banks he worked

1 for. Not the banks that I've ever been to, but that was his
2 testimony.

3 Chuck Darter, Mr. Darter's testimony, it actually
4 supported the fraud case. He testified that in March 2017
5 the audit -- after the audit, he told the defendant that
6 Reagor-Dykes needed money, working capital, to keep the
7 business healthy. This is one month before they meet with
8 the IBC representatives, and it is wholly consistent with
9 what the defendant told them that, hey, we need money to
10 operate our dealerships.

11 So as far as not doing any rebuttal because we
12 didn't have anything to say or we were devastated, there was
13 some sort of kill shot? No. They just didn't talk about
14 anything relevant in the Defense's case. The only thing they
15 talked about helped show that it was fraudulent. What's
16 there to rebut?

17 I talked a little bit about simplicity. I want to
18 walk you through just sort of the common-sense truth about
19 the IBC loan. And, hopefully, as I walk through this, I'll
20 make it relatable to something that each of you here in this
21 jury box have been through. The defendant didn't need to
22 look at one document, a shred of paper, or an e-mail, he
23 didn't need to look at anything to know that this was wrong.

24 And let's relate. If any one of you go to the bank
25 and you tell the bank, I need a loan to buy a home, the bank

1 expects, demands that you use the money to buy a home. If
2 you tell the bank you want to borrow money to buy a car, you
3 have to use that money to buy the car. If you tell the bank
4 you want to borrow money to use in your business, you have to
5 use the money in your business.

6 The truth here is very simple. It's very
7 straightforward. The defendant lied to IBC Bank about the
8 purpose of the loan. That lie was material because IBC Bank
9 never would have made the loan if it had known the truth.
10 The defendant devised a scheme with the CFO to hide it from
11 the Reagor-Dykes Auto Group and the banks. The defendant had
12 Shane Smith execute the scheme, and the defendant is guilty
13 of bank fraud and making a false statement to a bank.

14 Hopefully, the presentation that I've made in
15 opening and here on rebuttal has flattened that maze line a
16 little bit and allowed you to move in a straight line to the
17 truth, because it really is a straight line.

18 Look at the e-mails during the relevant time
19 period. Look at the testimony from the relevant time period.
20 Focus on what's at issue here. Fraud, not breach of
21 contract; not a peripheral player, Shane Smith. Fraud.

22 The evidence that the defendant defrauded IBC Bank,
23 lied to IBC Bank, overwhelming well beyond any reasonable
24 doubt.

25 I ask you to render a verdict that is consistent

1 with the truth, and that is guilty.

2 THE COURT: Okay. At this time, I'll instruct Mr.
3 Cogdell and Mr. Haag, please remove all the demonstratives
4 that are blocking lines of sight between counsel table and
5 the bench. And we'll begin to give the case to the jury.

6 Now, the parties have completed their closing. At
7 this time, I'll ask the two alternate jurors to please stand.

8 And, Mr. Haag, is there any objection from the
9 Government to dismissing the alternates at this point?

10 MR. HAAG: No, Your Honor. I guess I'm sorry.

11 THE COURT: Subject to --

12 MR. HAAG: I know it's anticlimactic for y'all too
13 but --

14 THE COURT: Subject to recall --

15 MR. HAAG: Yes, Your Honor.

16 THE COURT: -- in the event of some emergency, is
17 there any objection from the Government to dismissing these
18 two alternates?

19 MR. HAAG: No, Your Honor.

20 THE COURT: Mr. Cogdell, does the Defendant have
21 any objection to dismissing these two alternates?

22 MR. COGDELL: We share the same sentiments as Mr.
23 Haag.

24 COURT'S INSTRUCTIONS TO ALTERNATE JURORS

25 THE COURT: Okay. And now let me share my

1 sentiment. I do not want you to feel as if your time were
2 wasted, and I want to give you a real-world example from my
3 dear friend in Fort Worth, Judge Reed O'Connor, who had a
4 trial with just twelve jurors in a criminal case, and then
5 someone slipped and fell in the stairwell. And they had to
6 declare a mistrial because no alternates were available after
7 about three or four days of hard work by the attorneys, the
8 court staff, and the personnel involved with that case.

9 Your role is essential, especially, in a criminal
10 case where you must have twelve jurors, so please do not look
11 upon this time as lost or wasted. You were essential to this
12 criminal process, especially in these cases where we have to
13 have twelve jurors to reach a verdict.

14 So, at this point, I am going to dismiss you. I
15 will continue to admonish you to not discuss anything about
16 this case until you receive word of the verdict or the
17 resolution of this case.

18 Again, if there is an emergency during
19 deliberations and a juror needs to leave for some excusable
20 reason, you may need to step in and fill that role. So I'll
21 just ask that you follow the Court's admonitions about
22 researching the case and discussing the case with family and
23 friends until you learn about the result in this case.

24 At this point, I will excuse you. I'll instruct
25 you to follow the Court Security Officers and the Marshals to

1 collect your belongings. And then also please leave
2 identifying information with jury services, either the
3 District Clerk's Office or the Marshals. Make sure we have a
4 contact number for you, an e-mail, any identifying
5 information where we may reach you in the event of such
6 emergency.

7 But I know I speak for the Government and the
8 Defendant in this case that your time was appreciated.
9 You've fulfilled your civic duty, and you are essential to
10 this process. So, with that, you are dismissed at this point
11 with the instructions of the Court.

12 **COURT SECURITY OFFICER:** All rise.

13 **(Alternate jurors excused and left the courtroom.)**

14 **COURT'S FINAL INSTRUCTIONS TO THE JURY**

15 **THE COURT:** Now, be seated. For the jurors, at
16 this point, as I mentioned, the parties have completed
17 closing. My law clerk will distribute the copy of the Final
18 Jury Charge. Again, this is the work product of a Charge
19 Conference with both attorneys for the Government and the
20 Defendant. We have now reduced to finality the jury charge
21 that will instruct your deliberations.

22 I will remind you that, when you return to the jury
23 room, you must first designate a foreperson. So you alone
24 decide the protocol for that, but you should first designate
25 a jury person to begin your deliberations.

1 Also, this is an instruction at the deliberation
2 phase that is slightly different from the repeated admonition
3 I have given you about discussing this case outside these
4 four corners.

5 Now that you are entering deliberations, all twelve
6 of you must be present when deliberations occur. So you are
7 now allowed to begin discussing the case, the facts, the
8 evidence, your opinions, but all twelve must be present for
9 those deliberations.

10 So, similar to the admonitions I have been giving
11 you throughout the week, do not discuss this case if you're
12 alone for lunch reasons or restroom reasons or away from the
13 jury deliberation room. The deliberations need to take place
14 in that room with all twelve present. And you should stop
15 your deliberations until any removed member returns back to
16 that room.

17 Now, you have the jury charge in place. Does every
18 juror have a copy of the jury charge? Please raise your hand
19 if you have your copy.

20 **(Jurors' hands raised.)**

21 **THE COURT:** All right. There should be just one
22 copy of the verdict form. Once you have selected the
23 foreperson, that verdict form will be held until you reach
24 your result.

25 At this moment, I now instruct the Marshals to

1 retire you to the jury room, and you may begin your
2 deliberations.

3 **COURT SECURITY OFFICER:** All rise.

4 **(The jury left the courtroom for deliberations at 10:17**
5 **a.m.)**

6 **THE COURT:** Please be seated. So, at this point,
7 we'll just do housekeeping as to the exhibits in evidence.
8 Please check the Court's inventory. And then once that
9 process is complete, I'll ask you to execute the
10 Certification of Trial Exhibits for both sides.

11 By the Court's inventory, the following exhibits
12 are in evidence and may go back to the jury:

13 From the Government, 1 through 30, 33 through 39,
14 41 through 47, 48, 51, 56 through 57, and No. 51, which is a
15 video excerpt subject to the redaction order of the Court at
16 the Pretrial Conference.

17 For the Defendant, Exhibits 1 through 3, 5, 7
18 through 15, 20 through 35, and 47. And Defendant's Exhibits
19 which were conditionally admitted subject to authentication,
20 6, 16, 18, and 19 are not in evidence.

21 Mr. Haag, does the Government concur with the
22 Court's inventory of the exhibits, which may go back to the
23 jury?

24 **MR. HAAG:** Yes, Your Honor, it does. And we'll
25 work with the Defense. We have the exhibits loaded onto a

1 thumb drive, so we will work to make sure that those are --

2 THE COURT: Okay. I just wanted to make sure there
3 was no disagreement about what was or was not presented into
4 evidence.

5 Now, Mr. Cogdell, does the Defendant agree with the
6 Court's inventory of the exhibits that may go back to the
7 jury?

8 MR. COGDELL: Judge, Your Honor, we had 19, the
9 capital injection documents as being agreed to.

10 THE COURT: Okay. And, Mr. Haag, on Defendant's
11 Exhibit No. 19 --

12 MR. HAAG: That was subject to authentication, Your
13 Honor. That was -- that, again, I believe was prepared by
14 Mr. Kirkendall, who was Rick Dykes' attorney, so that was --
15 that exhibit was unable to be authenticated.

16 THE COURT: Okay. And that is the Court's
17 recollection as well. That wasn't presented for purposes of
18 authentication, and I don't recall that it was authenticated.
19 So it unless -- unless my recollection is incorrect about the
20 trial and how it --

21 MR. COGDELL: I'm not suggesting it is. I do --
22 unfortunately, it sparks some memory with me that I needed to
23 show it with -- to Smith, and I didn't, so --

24 MR. HAAG: Can I see what 19 is? I may be
25 confused.

1 **THE COURT:** If the parties can reach agreement,
2 I'll submit it to the jury.

3 **(Mr. Haag/Mr. Cogdell sotto-voce conference.)**

4 **MR. COGDELL:** Never mind.

5 **MR. HAAG:** We did. Your Honor, I'm sorry, I was
6 thinking of another one. 19 is admitted. We just asked for
7 a cleaner copy that we gave them, so as long as it's a
8 cleaner copy, yes.

9 **THE COURT:** Okay. So, with those corrections, as
10 agreed to the parties, Defendant's Exhibit 19 will be
11 submitted to the jury.

12 With that correction, Mr. Cogdell, does the
13 Defendant agree with the Court's inventory of the exhibits
14 that should go to the jury?

15 **MR. COGDELL:** Yes, sir.

16 **THE COURT:** Okay. And, again, once that process is
17 complete, I'll ask that both sides execute the Certification
18 of Trial Exhibits.

19 Regarding courtroom technology, the Dallas Division
20 has sent an IT professional. His name is Oscar. I assume
21 you have worked with him in your own courtroom technology.

22 We are providing a laptop for any audio or video
23 exhibits that should be played. Our IT professional will be
24 available should there be any questions about playing the
25 audio, playing the video, and so we will provide the laptop

1 courtesy of the Court, and we'll also provide the IT support
2 should there be any questions from that.

3 And, at this point, I think we are ready to stand
4 in recess and await the result.

5 Just one final instruction on availability. I
6 understand, Mr. Cogdell, you have pending cases in the
7 Southern District of Texas. I am -- I will allow some
8 substitution of counsel, if necessary, given the locality,
9 but just make certain that there is a member of the defense
10 team who is within the geography and available.

11 MR. COGDELL: Sure, yes.

12 THE COURT: Okay. And I ask that --

13 MR. COGDELL: Is that a way of saying you would
14 like me to go?

15 (Laughter.)

16 THE COURT: Mr. Cogdell, we've been in court
17 together before, and I'm always happy to see you.

18 So let me make sure there's no other housekeeping.
19 Please give all of your current contact information to my
20 courtroom deputy. Let me make sure there's nothing I can
21 clear up before I recess and allow the attorneys to retire.

22 (Court/courtroom deputy sotto-voce conference.)

23 THE COURT: Okay. So it looks like we have all of
24 your contact information, which means we can trace and track
25 you.

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JURY NOTE NO. 1

(During deliberations, the jury sent out a note; the following took place in open court with all parties present at 2:56 p.m.)

THE COURT: Please be seated. And I'll instruct the courtroom deputy to turn on the sound machine to mute any of this conversation from the deliberation room.

MR. COGDELL: Do you wish us at the bench, Your Honor?

THE COURT: I think it will be okay. The way the audio system works, it should create a sound wall between these two spaces, but if -- if counsel is more comfortable at the bench addressing questions — I know my court reporter is not more comfortable with you at the bench — but I'll allow it.

Okay. Let's make sure that their sound machine is activated. Okay. So that's been activated, and we should be sound-proofed at this point.

So the Court is back on the record in No. 2:21-CR-25-Z-BR-1, United States of America versus Bart Wade Reagor.

This is Jury Note No. 1, and I am holding the only copy. To Judge Kacsmayk: No. 1: Clarification on aiding and abetting? No. 2: Can we have the original Indictment?

So we will take those up in turn, and I'll begin

1 with the first question on clarification on aiding and
2 abetting.

3 Mr. Frausto, any response from the Government on
4 how the Court should respond and what additional response is
5 necessary?

6 MR. HAAG: Is that the -- does it just say
7 clarification?

8 THE COURT: I am reading it verbatim, and I feel
9 like Alex Trebek on "Jeopardy," and I wish it was formulated
10 in the form of a full question, but it is: Clarification on
11 aiding and abetting, question mark.

12 And my inclination is to refer them back to the
13 pattern. They have the charge. They have two pages. We
14 worked together as counsel in court to formulate that charge.
15 I'll just refer them back to the pages, and that they should
16 follow those instructions.

17 But I have pulled caselaw, Fifth Circuit caselaw on
18 the substantive law of aiding and abetting. Sometimes
19 there's confusion about it as a separate count, or whether
20 it's part of the indictment or not, but, at this point, I'm
21 content to direct them back to the jury charge as it is
22 written and agreed to.

23 MR. HAAG: I agree with that, Your Honor.

24 THE COURT: Okay. Mr. Cogdell?

25 MR. COGDELL: Yeah. We agree with that, with the

1 additional reason, of course, we didn't feel like aiding and
2 abetting was raised by the evidence, so we certainly don't
3 think it should go further than what the Court's doing.

4 **THE COURT:** Okay. So we had an objection on that
5 obviously during the Charge Conference.

6 The Court found that there was no undue surprise
7 because it appeared in the very Indictment that served as the
8 charging instrument in this case. I do find that that
9 objection has been preserved for appellate purposes.

10 But now that the jury has the instruction, I intend
11 to refer them back to that instruction.

12 Is that acceptable to the Government?

13 **MR. HAAG:** Yes, Your Honor.

14 **THE COURT:** Is that acceptable to the Defendant?

15 **MR. COGDELL:** Yes, sir, as long as our position is
16 clear, and I think it is, that we don't -- we have --

17 **THE COURT:** Okay.

18 **MR. COGDELL:** -- not waived our objection to it in
19 the first place.

20 **THE COURT:** Okay. And, on that point, the Court
21 will further find that during the Charge Conference that the
22 parties did have a conversation and colloquy about the aiding
23 and abetting jury charge instruction and whether it was
24 appropriate here.

25 During that discussion, the Court did find that

1 there was no unfair surprise. The Indictment was filed on
2 April 22nd, 2021. That Indictment begins with an
3 Introduction, followed by Count One and Two, beginning on
4 Page 4, which ends with the following language on Page 5: In
5 violation of Title 18, United States Code, Sections 1344(2)
6 and 2.

7 And, of course, 18 U.S.C. Section 2 is the aiding
8 and abetting section.

9 Courts in the Fifth Circuit and elsewhere have also
10 held that it need not even appear in indictment because it's
11 in essence part of the corpus of federal criminal law.

12 But, here, it was actually included, and the
13 parties have been on notice since at least April 22nd, 2021.

14 Is there anything additional on aiding and
15 abetting? The Court will just direct them to follow the
16 charge.

17 Mr. Haag, anything else that you can think of that
18 needs to be preserved for record purposes?

19 MR. HAAG: No, Your Honor, not --

20 THE COURT: Anything --

21 MR. HAAG: -- at this time.

22 THE COURT: -- from Mr. Cogdell?

23 MR. COGDELL: Nothing other than what we've already
24 stated.

25 THE COURT: Okay. All right. Now let's move to

1 Question No. 2. Can we have the original Indictment?

2 So I'll hear from the Government first and then the
3 Defendant.

4 **MR. HAAG:** Your Honor, we would have no objection
5 with the original Indictment being provided to the jury.
6 It's been read to the jury. I don't think it's a secret, so
7 we would have no objection to the jurors being able to read
8 it.

9 **THE COURT:** Okay. And then I'll let Mr. Cogdell
10 respond in turn.

11 **MR. COGDELL:** I object to them receiving a copy of
12 the Indictment, Your Honor. It is not evidence, and I object
13 to them receiving a copy of it.

14 **THE COURT:** So, here, based on a quick survey of
15 Supreme Court and Fifth Circuit law, I would refer counsel to
16 *United States versus Tucker*, 526 F.2d 279. Since it is
17 permissible for a properly instructed jury to have copies of
18 the indictment during deliberation, that procedure is
19 permissible. So, here, I'm summarizing from Page 283. That
20 is a Fifth Circuit case.

21 And I also would reference a Supreme Court case
22 *Weeks versus Angelone*. This is 120 S. Ct. 727 at Page 733.
23 A jury is presumed to follow its instructions. Similarly, a
24 jury is presumed to understand a judge's answers to its
25 questions.

1 So, at this point, were I to send it back to the
2 jury, I could reiterate multiple instructions from this Court
3 that the Indictment is not evidence, that it should not be
4 considered as evidence, but because the jury is at least
5 requesting it, they must consider it helpful to their
6 deliberations.

7 But I would just stand on a series of admonishments
8 that this Court has made from voir dire forward. I think the
9 record will reflect multiple statements to this jury that the
10 Indictment is not in evidence.

11 They are also in possession of a jury charge, which
12 is not evidence. So because juries are presumed to follow
13 this Court's instructions, I'm inclined to send it back
14 unless I hear additional persuasive argument.

15 **MR. COGDELL:** Well, I'm not going to talk you out
16 of sending it back. I would request that they be instructed
17 that it is not evidence, nor can they consider it as
18 evidence.

19 **THE COURT:** Okay. With that instruction, are the
20 parties in agreement that that plan will satisfy both of your
21 concerns?

22 **MR. HAAG:** Yes, Your Honor.

23 **THE COURT:** Okay. And I'll just -- I'll make sure
24 that the form of that reiterates that you have been
25 repeatedly admonished from voir dire throughout the multiple

1 days of this trial that an indictment is not evidence, and I
2 stand on those, and then I, again, admonish you that it is
3 not.

4 So, with that admonition, I will send the copy
5 back. Are they -- they're requesting the original
6 Indictment. Do we have that on file?

7 (Court/courtroom deputy sotto-voce conference.)

8 THE COURT: I'm not sure if this is like a best
9 evidence request from the jury that we produce the original.

10 All parties are agreed on what the operating charge
11 instrument is in this case. I'm intending to just send a
12 copy.

13 I'm assuming there's no objection from the
14 Government, as long as it is the Indictment that we have all
15 looked at for months and months and months.

16 MR. HAAG: No, Your Honor.

17 THE COURT: Even though they're requesting original
18 Indictment, I think this is just maybe some confusion about a
19 sequence of like how things are charged by a grand jury, but
20 if it's a copy that we've all seen before, any objection to
21 sending a copy?

22 MR. HAAG: No, Your Honor.

23 THE COURT: Any objection to sending a copy?

24 MR. COGDELL: None that I --

25 THE COURT: Okay.

1 **MR. COGDELL:** -- haven't already raised. I mean,
2 we've only had one. There hadn't been a Superseding
3 Indictment. It hasn't changed.

4 **THE COURT:** Right. That's exactly right. So I
5 think, even though the jury may be using different
6 terminology, it will be the same document that everyone has
7 been operating from for months.

8 Now, one additional finding for the record, we'll
9 call this the smoke-break finding. So before we recess and
10 allow the jury to return to deliberations with the Court's
11 instructions, the Court will make a finding on the record.

12 During the one-hour lunch break, the Defense
13 attorney, Mr. Payne, did notice that a jury [*sic*] was in the
14 parking lot to smoke a cigarette. Court Security at all
15 times were aware of this cigarette break. It was in
16 conjunction with an early lunch break.

17 So, again, the Court has repeatedly admonished the
18 jurors that they are not to discuss this case during
19 deliberations without all twelve persons present. I
20 emphasized that with force at the close of business today.

21 And that was an approved break. There are no
22 allegations of juror misconduct. Absent further allegations
23 of evidence, the Court finds no cause to further investigate
24 the juror smoke break.

25 Anything from the Government on the smoke break?

1 MR. HAAG: No, Your Honor.

2 THE COURT: Anything from the Defense?

3 MR. COGDELL: No, sir.

4 THE COURT: Okay. And it might have confused
5 Defense Counsel, because the lunch break was early today, and
6 they requested that that one person be excused.

7 And this Court does find that the jury can follow
8 the Court's repeated admonition and instruction that they not
9 deliberate without all twelve present.

10 So I will formulate the Court's response to Jury
11 Question No. 1. That will be made a part of the record. And
12 then we will allow them to continue their deliberation.

13 If we receive any other news, you will be contacted.

14 Mr. Cogdell?

15 MR. COGDELL: Yes, sir. Depending upon a
16 conversation I have with Mr. Frausto, I may leave. I've got
17 to be in Houston at 10:00 in the morning, and it's a 10-hour
18 drive. I may leave Mr. Powell in charge just depending upon
19 the conversation I have with Mr. Frausto.

20 But if you don't see me, I appreciate your
21 professionalism and candor throughout this trial.

22 THE COURT: Okay. Well, and I do want to find for
23 the record this defendant has received capable and effective
24 representation by Mr. Cogdell, who has undertaken Herculean
25 logistical efforts to prepare for this case, then to prepare

1 also for a simultaneous pending case in the Southern District
2 of Texas, and, at all times, he's been available to this
3 Court and ready, prompt, on time, even with an early start
4 time of 8:00.

5 So I don't know how you have achieved by location
6 in two districts, but you have effectively taken care of this
7 case, and now I understand that you -- you have obligations
8 in that pending case.

9 So thank you for all of that effort. You went
10 above and a bond -- above and beyond to be efficient and to
11 work hard on extremely tight deadlines, so I appreciate that.

12 **MR. COGDELL:** Thank you.

13 **THE COURT:** Okay. The Court stands in recess, and
14 the jury will return to deliberate.

15 **COURT SECURITY OFFICER:** All rise.

16 (Recess at 3:08 p.m.; deliberations continued)

17 -----

18 JURY NOTE NO. 2

19 (During deliberations, the jury sent out a note; the
20 following took place in open court with all parties present
21 at 4:44 p.m.)

22 **COURT SECURITY OFFICER:** All rise.

23 **THE COURT:** Please be seated. So the Court's back
24 on the record in United States versus [sic] America versus
25 Bart Wade Reagor, Criminal No. 2:21-CR-25-Z-BR-1, now, on

1 hearing to address Jury Note No. 2 where the following words
2 are written to Judge Kacsmayk. We are deadlocked.

3 And so, at this point, I will hear recommendations
4 from both parties.

5 I'll state at this moment I am disinclined to go
6 directly into an Allen Charge. I'm leaning towards either
7 sending a note back or bringing in the jury and just giving
8 them an admonition to continue the work done in the typical
9 form that we've seen, but I'm open to persuasion and argument
10 of the parties.

11 Mr. Haag?

12 **MR. HAAG:** Yes, Your Honor. I believe at least at
13 this stage the appropriate resolution would be to send a note
14 back to the jurors asking them to please continue their
15 deliberations.

16 **THE COURT:** Okay. And is it the Government's
17 position that we do not need to do that from the bench or
18 with the jury present in the courtroom?

19 **MR. HAAG:** I think so, Your Honor. I think a
20 written note would be sufficient, at least for this at this
21 point.

22 **THE COURT:** Okay. From the Defendant?

23 **MR. POWELL:** Your Honor, we're okay with that as
24 well. I don't think it's appropriate to -- or I don't think
25 it's necessary to bring them out.

1 **THE COURT:** Okay. So, at this point, I'll -- I'm
2 using -- there's a Fifth Circuit case that summarizes some of
3 the pitfalls in sending instructions back where we receive a
4 deadlock notice. It's the *Lindell* case, and I'm missing the
5 case citation.

6 But it's essentially collecting the Fifth Circuit
7 instructions on that. Avoid references to numerical
8 divisions. That should not be communicated at any point.
9 Set no deadlines. Give no hard coercive language about
10 continuing.

11 So I won't do any of those things. I'll just
12 encourage them, you know, consistent with the jury charge and
13 the Court's instructions, to continue deliberating.

14 I was going to add a note about how much work the
15 attorneys and the parties have put into this case and how
16 they should anticipate a final result in the form of a
17 verdict, if possible, unless the Government or the Defendant
18 disagree with that and would find that coercive.

19 **(Mr. Powell/Mr. Haag sotto-voce conference.)**

20 **MR. HAAG:** Your Honor, I guess in the silent
21 consultation with Mr. Powell, that we are of the opinion
22 that, at this point, just the simple one sentence: Please
23 continue your deliberations at this point.

24 Should that progress further, then perhaps it might
25 be more appropriate, but I think the first one is just --

1 **THE COURT:** Okay. We'll use a note again this
2 time.

3 I want to prepare counsel for the Court's next
4 step, if necessary. The Court is reviewing the Fifth Circuit
5 Criminal Pattern Charge 1.53 on the modified Allen Charge, so
6 should we get another note on deadlock, you should anticipate
7 some discussion and my consultation with the parties on the
8 appropriateness of that modified Allen Charge. So I believe
9 that's a potential next step should we receive a similar
10 note.

11 But, at this point, we will send a similar note
12 back to the jury encouraging them to further their
13 deliberations consistent with the jury charge and encourage
14 them to reach a final result.

15 Is that acceptable to the Government?

16 **MR. HAAG:** Yes, Your Honor.

17 **THE COURT:** Acceptable to the Defendant?

18 **MR. POWELL:** It is, Your Honor.

19 **THE COURT:** Okay. And you will receive copies of
20 those by e-mail.

21 All right. The Court stands in recess, and we'll
22 send the note.

23 **COURT SECURITY OFFICER:** All rise.

24 **(Recess at 4:48 p.m.; deliberations continued)**

25 -----

JURY NOTE NO. 3

(During deliberations, the jury sent out a note; the following took place in open court with all parties present at 5:38 p.m.)

THE COURT: Please be seated. And the Court is back on the record in United States of America versus Bart Wade Reagor, Criminal Action No. 2:20-CR-25-Z-BR-1 [sic], for a hearing on Jury Note No. 3.

And I'll read that aloud, and then I'll ask the attorneys for their recommendations on moving forward.

To Judge Kacsmayk, quote: There is no way we can be unanimous. Can we at least be dismissed for the day?

So it's the Court's intention, unless I hear persuasive argument from either side, to dismiss them for the day, and then because we have some jurors who are traveling extreme distances, I'm going to order a 10:00 start time for the morning. I know we have at least one juror who's approximately two hours away.

So after the pace that we've set for this case throughout this week, if I can give them a break this evening and then also on the front end, given some of the travel distances involved for some of these jurors, maybe cooler heads can prevail. They can restart refreshed.

Is there any objection to that game plan from the Government?

1 **MR. HAAG:** No, Your Honor.

2 **THE COURT:** Is there any objection to that game
3 plan from the Defendant?

4 **MR. POWELL:** No, Your Honor. And I'm sure the
5 Court is going to do this, but as long as they can get a lot
6 of very strict admonishments about watching news reports
7 and --

8 **THE COURT:** Absolutely, and especially approaching
9 reporters and things like that.

10 So let me -- let me make sure that I've got my
11 notes ready for those admonitions. I intend to tell them the
12 following:

13 Let me know if either of the career prosecutors in
14 the room have additional admonitions that you would request.

15 But I intended to tell them the following at the
16 close of today before they're dismissed:

17 Members of the Jury, thank you so much for your
18 diligence today. In a moment, we're going to be recessing
19 until 10:00 a.m. in the morning.

20 I remind you not to talk about the case with
21 anyone. If you will please, leave your notepads in the jury
22 room. They will be available for you when you return
23 tomorrow morning. If you'll be here a little before 10:00 in
24 the morning, we'll start shortly after everyone arrives.

25 Once again, please do not read or watch news media

1 stories or conduct independent research on the events of this
2 case or the people involved.

3 Additionally, if you are contacted by any third
4 parties, such as the media, about this case, please notify
5 the Court immediately.

6 Members of the Jury, you are dismissed for the
7 evening.

8 And then I thought about giving a little pep talk
9 about how hard they've been working and how hard the
10 attorneys and parties in the case have been working.

11 Is there any other particular instruction that you
12 would request, Mr. Haag?

13 **MR. HAAG:** No, Your Honor.

14 **THE COURT:** Is there any particular instruction
15 that you would request, Mr. Powell?

16 **MR. POWELL:** No, sir, Your Honor.

17 **THE COURT:** So I'll leave them with that, and then
18 I want to bring them in as quick as we can so that they can
19 be dismissed as requested.

20 I'll paper this with, again, a response to Jury
21 Note 3. You'll receive it by e-mail, but we'll do that
22 later. We'll do this on the record with the jury present.

23 So, at this point, I'll instruct the Marshals and
24 CSOs to bring in the jury.

25 **(The jury returned to the courtroom at 5:41 p.m.)**

1 **COURT SECURITY OFFICER:** All rise for the jury.

2 **THE COURT:** Okay. Please be seated. Members of
3 the Jury, thank you so much for your diligence today.

4 In a moment, in response to Jury Note 3, we are
5 going to be recessing until 10:00 a.m. tomorrow morning. So,
6 in response to the note, I've consulted with the parties and
7 the attorneys in this case, and we're agreed, after the pace
8 of this case and the work effort that's been put in by you
9 and also the attorneys, we think we're ready to break, and
10 you'll soon be dismissed.

11 During that time, I will remind you not to talk
12 about the case with anyone. If you will please, leave your
13 notepads in the jury room. They will be available for you
14 when you return tomorrow morning. If you'll be here a little
15 bit before 10:00 a.m. in the morning, we'll start shortly
16 after everyone arrives.

17 Once again, please do not read or watch news media
18 stories or conduct research on the events of the case or the
19 people involved. So it's very important, given some of the
20 high profile names and events that circulate around this
21 case, that you don't do your own independent research. And
22 if you are contacted by any third party, including the news
23 media, about this case, please immediately notify the Court,
24 and I'll coordinate with the counsel to make sure that we
25 have a correct response to that.

1 And, as with today, lunch will be provided. The
2 Court will take care of those needs.

3 And I do want to thank you for the deliberation
4 that you've already done and the hard work that you've put
5 into this case. I know that we've been working at a very
6 fast pace.

7 At this point, we are prepared to dismiss you, and
8 we want to give you a later start time, so that you don't
9 continue at this breakneck pace any further. So you are
10 dismissed for the remainder of the evening.

11 Follow my instructions on jury badges, your notes,
12 and the rest, and we will reconvene tomorrow at 10:00, and
13 you are dismissed, and you are excused.

14 **COURT SECURITY OFFICER:** All rise.

15 **(Jury recessed for the day and leaves courtroom at 5:44**
16 **p.m.)**

17 **THE COURT:** Okay. Please be seated.

18 And I'll instruct my courtroom deputy to make sure
19 that the sound barrier is on in that deliberation room.

20 Again, as I discussed, it's the Court's intention,
21 not when the jury arrives tomorrow, but if we receive another
22 note, at that point to proceed to the modified Allen Charge
23 that I identified earlier.

24 If you have any legal arguments that you would make
25 on the phrasing of that, I intend to track pretty closely

1 with the pattern on that. If you have any recommendations,
2 I'll hear them before I instruct on the modified Allen
3 Charge.

4 When they arrive tomorrow, I intend to encourage
5 any additional notes in the form of questions that would help
6 clarify anything that can be clarified by the Court unless
7 the Government or Defendant object to that.

8 I -- you know, the first question was substantive.
9 I don't want to end any inquiries into substantive legal
10 questions that the Court may ask, but, at the same time, I'm
11 amenable to the idea that we don't want a lot of back and
12 forth on that. The jury charge should be sufficient.

13 But I'll hear your recommendations on that, Mr.
14 Haag?

15 **MR. HAAG:** Your Honor, I guess my recommendation
16 will be just to allow the jurors to come tomorrow at 10:00,
17 begin their deliberations and see how things play out.

18 **THE COURT:** Okay.

19 **MR. HAAG:** Again, hopefully, maybe taking a break,
20 you know, a good night's sleep, and perhaps they can reach a
21 verdict.

22 **THE COURT:** Okay. And Mr. Powell?

23 **MR. POWELL:** We're in agreement with that, Your
24 Honor.

25 **THE COURT:** Okay. Well, then I won't invite any

1 further inquiries into questions of law, or anything like
2 that. I'll just let them begin their deliberations promptly
3 with minimal instructions, just the standard instructions on
4 how they move about the space and the courtroom and the rest.

5 So we'll do that beginning promptly at 10:00. I'll
6 encourage counsel to be immediately available around 9:30
7 should any emergencies erupt.

8 So we will see you sometime between 9:30 and 10:00.
9 The Court stands in recess. You are dismissed.

10 COURT SECURITY OFFICER: All rise.

11 (Proceedings recessed at 5:46 until 10:00, 10/15/2021.)

12

13

14

15 PROCEEDINGS FOR OCTOBER 15, 2021

16 (The following took place in open court with the
17 defendant present, but without the jury.)

18 THE COURT: Please be seated.

19 The Court calls United States of America versus
20 Bart Wade Reagor, No. 2:21-CR-25-Z for continued jury
21 deliberations.

22 At this point, the Court is prepared to call in the
23 jury.

24 Does the Government have any housekeeping before we
25 do that?

1 **MR. HAAG:** No, Your Honor.

2 **THE COURT:** Does the Defendant have any
3 housekeeping before we do that?

4 **MR. POWELL:** No, Your Honor.

5 **THE COURT:** At this point, we will call in the
6 jury.

7 **(The jury returns to the courtroom 10:09 a.m.)**

8 **COURT SECURITY OFFICER:** All rise for the jury.

9 **THE COURT:** Please be seated.

10 Members of the Jury, I'm hopeful that a bit of a
11 break this morning allowed you to recuperate on any sleep
12 that you've lost through this long process.

13 At this point, I'm going to allow you to retire to
14 the jury room to continue your deliberations.

15 All the same instructions apply. Just be very
16 careful that all twelve are present when you're doing those
17 deliberations. If you do require any breaks, please
18 coordinate with our Court Security Officer on breaks so that
19 our personnel are aware if anybody is exiting or leaving the
20 room.

21 If there's anything you need in the terms of -- or
22 I should say in terms of refreshments, anything that would
23 ease this long and hard process, please let us know. Our
24 court staff stands ready to give you what you need to
25 complete this process.

1 So, at this point, I'm going to encourage you to
2 keep going, to continue these jury deliberations. As always,
3 you should be guided by that jury charge. And if you need
4 any additional copies or materials that are not yet
5 available, if you're struggling with IT technology, anything
6 like that, just know that our court staff is at the ready to
7 make that process as comfortable as possible.

8 So, at this point, I'm going to instruct you to
9 retire to the jury room to continue your deliberations. And
10 please let my staff know if there's anything else we can do
11 to help that process move forward, and we'll send in IT
12 support, we'll send in refreshments, and, of course, you'll
13 get your lunch break as usual. We will do whatever it takes
14 to make that process as comfortable as possible, so we are
15 happy to help, and don't hesitate to ask.

16 So, at this point, I'll instruct you to retire for
17 further deliberation.

18 **COURT SECURITY OFFICER:** All rise for the jury.

19 **(The jury leaves the courtroom for deliberations at**
20 **10:11 a.m.)**

21 **THE COURT:** Please be seated. So the Court will
22 give both parties the usual instructions to have at least one
23 member of your team within 15 miles of the courthouse. We
24 have your contact information. Keep your cell phones close.
25 Check your e-mail.

1 I am going to send out the official copy of this
2 Court's response to Juror Question No. 3. We did that orally
3 yesterday, but I'll just memorialize that in a document.
4 That will be sent to your e-mails, but just have at least one
5 member of your team ready and accessible. We don't have any
6 hearings in this courtroom. We've cleared the deck.

7 So as soon as we get a question or we get a verdict
8 or we get anything responsive from the jury, I'll notify you.
9 We'll reconvene in this room.

10 And I know this has been a long week, but everybody
11 has worked diligently, and I want to compliment counsel both
12 for the Government and the Defendant for an extremely
13 efficient use of judicial resources. This is one of the most
14 efficient cases I've ever seen, and it's really because both
15 sides have worked very hard on this case.

16 It's Friday. I know it's exhausting, but bear with
17 us a little bit longer, and please let my court staff know if
18 there's anything that the attorneys need on this case. We'll
19 be responsive to that as well.

20 The Court stands in recess until further notice.

21 **COURT SECURITY OFFICER:** All rise.

22 **(Recess at 10:12 a.m.; deliberations continued)**

23

24

25

JURY NOTE NO. 4

(During deliberations, the jury sent out a note; the following took place in open court with all parties present at 11:57 a.m.)

THE COURT: Please be seated. The Court is back on the record in United States of America versus Bart Wade Reagor, Criminal Action No. 2:21-CR-25-Z-BR-1 to convene a hearing with the parties regarding Jury Note No. 4, which reflects the following text to Judge Kacsmayk.

Quote: May we have court transcripts?

So neither party requested, and this Court did not issue, a preliminary instruction on note-taking during voir dire or in the jury charge, but I will use the following pattern, which is most frequently used as a preliminary instruction during voir dire, but can be converted in the past tense.

It's the Fifth Circuit Criminal Pattern Jury Instruction 1.02, Note-Taking By Jurors, and I'm using alternate -- Alternative B, so I do allow for note-taking so that's the correct language.

I will simply convert this to the past tense and then send this back in note form, as long as I don't hear disagreement or argument from the parties.

Quote: Your notes should be used only as memory aids. You should not give your notes precedence over your

1 independent recollection of the evidence. If you do not take
2 notes, you should rely upon your own independent recollection
3 of the proceedings. And you should not be unduly influenced
4 by the notes of other jurors. Notes are not entitled to any
5 great weight, greater weight than the memory or impression of
6 each juror as to what the testimony may have been.

7 Whether you take notes or not, each of you must
8 form and express your own opinion as to the facts of the
9 case.

10 Then most relevant here: You will note that we do
11 have an official court reporter making a record of the trial.
12 However, we will not have typewritten transcripts of this
13 record available for your use in reaching a decision in this
14 case.

15 So the Fifth Circuit has repeatedly held whether
16 jurors take notes in a matter is a matter of discretion of
17 the trial judge, and that's from the *Fortenberry* case, 644
18 [sic] F.2d 1288, and the *Rhodes* case, 631 F.2d 43.

19 This Court did permit the jurors notepads and
20 note-taking, but did not include a separate instruction
21 either in the preliminary form or in the charge.

22 At this point, I'll just convert this language to a
23 response unless I hear a reasoned legal objection from either
24 the Government or the Defendant.

25 Mr. Haag?

1 **MR. HAAG:** Yes, Your Honor. I'm good with that
2 instruction. I'm wondering -- and I'm speaking just sort of
3 pondering out loud, I'm wondering if it might be helpful to
4 add a sentence at the end. I know in past trials, if there
5 is a specific isolated portion of the transcript, then we
6 have provided that to the jurors.

7 And I'll defer to Mr. Powell's opinion. But, you
8 know, for example, if they want to say, we want to hear what
9 such and such said about such and such, we've given that
10 portion of a transcript.

11 But I'll defer to Mr. Powell as to whether he
12 thinks that's helpful or not.

13 **MR. POWELL:** And I certainly have seen that as
14 well, Your Honor. When there is a certified dispute as to
15 testimony from a witness, as far as their recollection is
16 concerned, I have seen that.

17 However, in this case, it doesn't appear to be the
18 situation, or at least we don't know if that's the situation.

19 **THE COURT:** No. This jury has struggled with
20 specificity in their questions.

21 **(Laughter.)**

22 **MR. POWELL:** Yeah. Yes, sir. And so -- no
23 question. And so I would object to including that sentence
24 that Mr. Haag is suggesting and just do what the Court has
25 proffered.

1 **THE COURT:** And, Mr. Frausto, I know Jeff Haag is
2 lead here, but it seems that you had an idea.

3 **MR. HAAG:** I think my suggestion, Your Honor, would
4 be, and, again, but perhaps add one sentence that, if there
5 is a specific portion of the trial transcript, then you may
6 request that portion, but I'll defer to Mr. Powell if he --

7 **THE COURT:** I think at this point we're going to --
8 I think because we did not -- neither party requested the
9 preliminary instruction on note-taking, I think it's
10 important that I give that at this time.

11 **MR. HAAG:** Okay.

12 **THE COURT:** And then follow with this final
13 paragraph, that written transcripts are not available, and --

14 **MR. HAAG:** That's fine, Your Honor.

15 **THE COURT:** This is the Court's rationale for
16 considering an admonishment to this jury when they were
17 present that the forms of their jury notes should require
18 additional specificity to help the Court work with counsel to
19 formulate, you know, greater particularity in their response.

20 Like, thus far, you know, we've had Kafkaesque
21 brevity in the notes to the Court. So if we -- you know, at
22 the next opportunity when the jury is present, at this time
23 it may be appropriate -- I won't force it on the parties, but
24 it may be important to give that instruction that the Court
25 discussed yesterday, that they should be more particular and

1 really focus on the specific thing or question or item of
2 evidence that they have a question about instead of general
3 questions about transcripts, aiding and abetting. You know,
4 these have come in very general forms, and so the Court is
5 struggling to give particular and specific responses.

6 We're all trying to abide the patterns and instruct
7 them to follow the charge, but, at this point, the questions
8 are so vague that I'm concerned that we might not be giving
9 them the content they need to reach a result.

10 So I'm going to send back this 1.02 form, and if
11 that produces another question, I am then going to call them
12 in at this point and admonish them to state their questions
13 with greater particularity because the attorneys will work
14 with the Court to give a more particularized response.

15 So far, I've been sending back pattern language and
16 form language. It doesn't really relate to any particular
17 caselaw or any particular fact or element of the trial, but
18 if they give us more particularity in response to that
19 instruction, then we can take up transcript excerpts and
20 things like that.

21 Is that acceptable to the parties?

22 **MR. HAAG:** Yes, Your Honor. I'm good with the
23 pattern. No additional language.

24 **THE COURT:** Okay. We'll send the pattern one more
25 time. If we get another generalized and vague question, I'll

1 call the jury in. I'll give them the instruction, from this
2 point forward, we're going to request greater particularity
3 in the form of the question so the parties can work together
4 to give a more particular response.

5 But, right now, I'm just going to send the form
6 back.

7 MR. HAAG: Yes, Your Honor.

8 THE COURT: Understood? Okay. Court stands in
9 recess. You will receive your electronic copy, and we'll
10 notify you if we have any additional paperwork from the jury.

11 COURT SECURITY OFFICER: All rise.

12 (Recess at 12:04 p.m.; deliberations continued)

13 -----

14 JURY NOTE NO. 5

15 (During deliberations, the jury sent out a note; the
16 following took place in open court with all parties present
17 at 1:57 p.m.)

18 THE COURT: Please be seated. The Court calls
19 Criminal Action No. 2:21-CR-25-Z-BR-1, United States of
20 America versus Bart Wade Reagor for continued jury
21 deliberations and to convene a hearing on Jury Note No. 5,
22 which I'll now read aloud, addressed to Judge Kacsmayk.

23 Quote: We are still deadlock with no agreement.
24 We have been through all evidence. All jurors say they will
25 not reconsider their vote.

1 At this point, as previously discussed, the Court
2 is inclined to call back the jury and read aloud the Allen
3 Charge as it appears in the Fifth Circuit Pattern 1.53. I
4 have provided counsel with a copy of that pattern and ask
5 that you review that at this time and state any objections to
6 any portion of that pattern.

7 **MR. POWELL:** Your Honor, before we -- may I address
8 the Court?

9 **THE COURT:** Yes.

10 **MR. POWELL:** Before we get into the Allen Charge,
11 the Defense feels it's necessary at this time to move for a
12 mistrial.

13 The jury has deliberated, by my calculations, in
14 the neighborhood of ten and a half to eleven hours total
15 time. That has even surpassed the amount of time that it
16 took to present the evidence.

17 This is now the third note that the jury has sent
18 to the Court stating that they are deadlocked, and it doesn't
19 appear that they're going to be able to reach a verdict. So,
20 at this time, we would move for a mistrial, Your Honor.

21 **THE COURT:** Okay. And a response from the
22 Government?

23 **MR. HAAG:** Your Honor, we would object to a
24 mistrial at this time. We think the more prudent course of
25 action would be to give the Allen Charge and then proceed

1 from there.

2 **THE COURT:** Okay. So this Court will reserve
3 judgment on the pending Motion for Mistrial.

4 And, at this moment, the Court will instruct --
5 unless I hear objections to the particular modified Allen
6 Charge that appears in the pattern, I think the more prudent
7 course is to allow the jury to hear that Allen Charge, and
8 then we'll discuss the additional instruction on
9 particularized questions in the jury form.

10 So I will carry forward and reserve judgment on
11 that motion. I will allow you to re-urge it at the next
12 interval where we get a jury note, but, at this point, I
13 think the best course of action is to present the Allen
14 Charge language that the Fifth Circuit has patterned, and
15 then I'll hear your recommendations on an additional
16 instruction for particularized questions and inquiry.

17 So I will deem that motion pending, and I will
18 reserve judgment until the next time the Court convenes a
19 hearing with counsel and the parties present.

20 **MR. POWELL:** Thank you, Your Honor.

21 **THE COURT:** Understood. Okay. So any objections
22 to the 1.53 Fifth Circuit Criminal Pattern on the modified
23 Allen Charge?

24 **MR. HAAG:** No, Your Honor.

25 **THE COURT:** Any objections to the 1.53 modified

1 Allen Charge as it appears in that Fifth Circuit Pattern?

2 MR. POWELL: No, Your Honor.

3 THE COURT: Okay. Let's move now to one additional
4 paragraph on specificity in questions.

5 So the parties did work through the break to try to
6 reach agreement on a form of an explanation that's
7 acceptable. It's my understanding that the parties are close
8 to something resembling this language, but that the Defendant
9 may still object.

10 Quote: For any further notes from the jury, if you
11 can be more specific in your question or request, then the
12 Court and the parties will be better able to respond to that
13 question or request.

14 So is this the form that the Government is
15 requesting?

16 MR. HAAG: Yes, Your Honor, it is.

17 THE COURT: And does the Defendant object to this
18 one additional sentence added to the modified Allen Charge?

19 MR. POWELL: We do at this time, Your Honor, just
20 for the mere fact that the jury hasn't specified that there
21 is a particular disagreement that they need to have some
22 clarification on. I know they've given some ambiguous notes
23 to the Court.

24 But we don't think -- it seems like over the last
25 couple of hours of deliberation, that doesn't seem to be the

1 issue anymore, and so we would object that it's not proper;
2 that it's not necessary at this time, Your Honor.

3 If the Court does -- excuse me, Your Honor.

4 **THE COURT:** Well, and I would say, looking across
5 the five, there have been references to -- there have --
6 there have been notes requesting clarification on aiding and
7 abetting. There have been questions about the availability
8 of transcripts. There have been questions on the Indictment
9 and request to see that.

10 So, to date, I think we have had three questions
11 that identified a category, but not stated with
12 particularity. So I'm inclined to give this, and that's the
13 reason I'm still considering it. But I'll allow you to
14 preserve your objection.

15 **MR. POWELL:** Thank you, Your Honor. We would just
16 object on that, that it's premature; that there hadn't been a
17 specific issue.

18 I understand the Court's reasoning that that --
19 that it does seem that they have some confusion maybe about
20 some of the issues, but I don't know if that's dissipated or
21 it seems to be. It's just one man's opinion.

22 As far as that particular sentence, if the Court
23 overrules our objection, we have no problem with that
24 language. Mr. Haag and I have visited about that particular
25 sentence, and we're fine with that sentence. We just don't

1 think it's necessary at this time.

2 **THE COURT:** Okay. So the Court overrules the
3 objection to that sentence. And it's the Court's
4 understanding now that the Court has entered its ruling
5 there's no further objection to the phrasing of the question;
6 is that correct?

7 **MR. POWELL:** That's correct, Your Honor.

8 **THE COURT:** Okay. At this point, I'll instruct
9 Court Security Officers and Marshals to bring in the jury.

10 **COURT SECURITY OFFICER:** All rise for the jury.

11 **(The jury returns to the courtroom at 2:03 p.m.)**

12 **THE COURT:** Please be seated. Okay. Very briefly,
13 after consulting with the attorneys, I will instruct you in
14 what the Fifth Circuit has termed a modified Allen Charge.
15 The name "Allen" just refers to a famous Supreme Court case.
16 I'll give you this instruction, and then we'll move forward
17 from there.

18 Members of the Jury, I am going to ask that you
19 continue your deliberations in an effort to agree upon a
20 verdict and dispose of this case, and I have a few additional
21 comments I would like for you to consider as you do so.

22 This is an important case. If you should fail to
23 agree on a verdict, the case is left open and may be tried
24 again.

25 Any future jury must be selected in the same manner

1 and from the same source as you were chosen, and there is no
2 reason to believe that the case could ever be submitted to
3 twelve men and women more conscientious, more impartial, or
4 more competent to decide it, or that more or clearer evidence
5 could be produced.

6 Those of you who believe that the Government has
7 proved the defendant guilty beyond a reasonable doubt should
8 stop and ask yourselves if the evidence is really convincing
9 enough, given that other members of the jury are not
10 convinced.

11 And those of you who believe that the Government
12 has not proved the defendant guilty beyond a reasonable doubt
13 should stop and ask yourselves if the doubt you have is a
14 reasonable one, given that other members of the jury do not
15 share your doubt.

16 Remember at all times, that no juror is expected to
17 yield a conscientious opinion he or she may have as to the
18 weight or effect of the evidence, but remember also that,
19 after full deliberation and consideration of the evidence in
20 the case, it is your duty to agree upon a verdict if you can
21 do so without surrendering your conscientious opinion.

22 You must also remember that, if the evidence in
23 this case fails to establish guilt beyond a reasonable doubt,
24 the accused should have an unanimous verdict of not guilty.

25 You may be as leisurely in your deliberations as

1 the occasion may require and should take all the time which
2 you may feel is necessary.

3 I will ask now that you retire once again and
4 continue your deliberations with these additional comments in
5 mind to be applied, of course, in conjunction with all of the
6 instructions I have previously given to you.

7 For any future notes from the jury, if you could be
8 or can be more specific in your question or request, then the
9 Court and the parties will be better able to respond to that
10 question or request.

11 And I notice that some people are wearing jackets.
12 If we need to adjust the thermostat, things as simple as HVAC
13 convenience, again, our court staff stands ready to assist
14 you. So if it's too cold, let us know, and we can make that
15 adjustment to make these deliberations more comfortable.

16 So, with that, I'll instruct you to retire for
17 further deliberations consistent with these instructions.

18 **COURT SECURITY OFFICER:** All rise.

19 **(The jury left the courtroom for deliberations at 2:07**
20 **p.m.)**

21 **THE COURT:** Please be seated. And, at this point,
22 I'll instruct court staff, CSO, and Marshals to confer with
23 the jurors about the temperature in the room. It does appear
24 that a couple of people are breathing smoke as they exit the
25 jury room.

1 (Laughter.)

2 THE COURT: So if it's too cold, we definitely need
3 to make that accommodation.

4 Is there anything further from the Government?

5 MR. HAAG: No, Your Honor. Thank you.

6 THE COURT: Is there anything further from the
7 Defendant?

8 MR. POWELL: No, Your Honor.

9 THE COURT: Okay. As we've done with these various
10 questions, I will document the Court's response, and you'll
11 receive those in your e-mail.

12 Please continue to abide the Court's instructions
13 to have at least one member of your team within 15 minutes of
14 the courtroom, and we'll continue to communicate as we have
15 done so up to this point. You are excused.

16 COURT SECURITY OFFICER: All rise.

17 (Recess at 2:07 p.m.; deliberations continued)

18 -----

19 JURY VERDICT

20 (The following took place in open court with the
21 defendant present, but without the jury present at 3:43 p.m.)

22 THE COURT: Please be seated. Okay. So I received
23 word from the jury that they have reached a verdict in this
24 case. And, at this point, consistent with Rule 43(b), I will
25 call in the jury, and we will go through the reading of the

1 verdict and the process to follow.

2 At this point, I'll instruct the Court Security
3 Officers and Marshals to bring in the jury.

4 **(The jury returns to the courtroom at 3:44 p.m.)**

5 **COURT SECURITY OFFICER:** All rise for the jury.

6 **THE COURT:** Please be seated. Members of the Jury,
7 I understand that you have reached a unanimous verdict in
8 this case.

9 At this point, I will hand the verdict form to my
10 courtroom deputy. And these are the procedures that we're
11 going to follow from this point forward.

12 So in a moment, my courtroom deputy will read aloud
13 the verdict. After the verdict is read, I'm going to ask
14 each of you individually if this is your verdict. This is
15 called polling the jury. And the purpose of polling is to
16 make sure that it is a unanimous verdict.

17 So as I ask each of you if this is your verdict,
18 I'll just ask you to raise your hand and say, yes, if this is
19 the case.

20 At this time, if the defendant will please stand
21 with counsel. My courtroom deputy will now read aloud and
22 publish the verdict.

23 **COURTROOM DEPUTY:** In the United States District
24 Court for the Northern District of Texas, Amarillo Division,
25 United States of America versus Bart Wade Reagor.

Verdict of the Jury

We, the jury, find the defendant, Bart Wade Reagor, on Count One of the Indictment - Bank Fraud, not guilty.

Count Two of the Indictment - Bank Fraud, not guilty.

Count Three of the Indictment - False Statement to a Bank, guilty.

THE COURT: And now, as I discussed, the Court will poll the jury.

Juror No. 1, is this your verdict?

JUROR NO. 1: Yes, Your Honor.

THE COURT: And Juror No. 2, is this your verdict?

JUROR NO. 2: Yes, Your Honor.

THE COURT: Juror No. 3, is this your verdict?

JUROR NO. 3: Yes, sir.

THE COURT: Juror No. 4, is this your verdict?

JUROR NO. 4: Yes, Your Honor.

THE COURT: Juror No. 5, is this your verdict?

JUROR NO. 5: Yes, Your Honor.

THE COURT: Juror No. 6, is this your verdict?

JUROR NO. 6: Yes, Your Honor.

THE COURT: Juror No. 7, is this your verdict?

JUROR NO. 7: Yes, Your Honor.

THE COURT: Juror No. 8, is this your verdict?

JUROR NO. 8: Yes, Your Honor.

1 THE COURT: Juror No. 9, is this your verdict?

2 JUROR NO. 9: Yes, sir.

3 THE COURT: Juror No. 10, is this your verdict?

4 JUROR NO. 10: Yes, Your Honor.

5 THE COURT: Juror No. 11, is this your verdict?

6 JUROR NO. 11: Yes, sir.

7 THE COURT: Juror No. 12, is this your verdict?

8 JUROR NO. 12: Yes, sir.

9 THE COURT: Okay. And, at this point, I will
10 direct my courtroom deputy to file and record the verdict.

11 And I will soon discharge you from your duties as
12 jurors, but I do want to provide some final instructions on
13 what you do from this point forward.

14 **COURT'S CONCLUDING INSTRUCTIONS TO THE JURY**

15 THE COURT: First of all, you are excused from the
16 jury now that you have returned a verdict, and you are now
17 free to talk about this case with anyone. You are also free
18 to decline to discuss this case if you wish. As the Court's
19 Charge has explained, your deliberations are secret, and you
20 never have to explain this verdict to anyone.

21 Under the rules of our court, no one associated
22 with this case — a lawyer, a litigant, or anyone acting on
23 their behalf — is permitted to contact you, any member of
24 your family or any associate of yours about your
25 deliberations. And that is a specific rule for the Northern

1 District of Texas.

2 I want to thank you sincerely on behalf of the
3 Court and staff and everyone associated with the case for
4 your tireless service. We began early every day. We worked
5 late every day. And you were working long hours through
6 deliberations and many follow-up questions, so I commend you
7 on your diligence and your service to this Court and your
8 sense of civic responsibility to work this difficult case to
9 a conclusion.

10 Now, some housekeeping. As a reminder, please hand
11 any notes that you took during trial, and your copy of the
12 jury charge to the CSO or Marshal. You may not take it home
13 with you. When you remove your personal belongings from the
14 jury room, please leave all of the exhibits and flash drives
15 and computer materials in the jury room. We will need those
16 for other court procedures and record purposes.

17 At this point, I know it's been a long process, so
18 I'm just going to let you go. Members of the Jury, thank you
19 for your service. You are excused.

20 **COURT SECURITY OFFICER:** All rise.

21 **(Jury is excused and leaves the courtroom at 3:48 p.m.)**

22 **THE COURT:** Okay. Please be seated. At this time,
23 Mr. Powell, does the Defendant wish to renew his Motion for
24 Judgment of Acquittal?

25 **MR. POWELL:** We do, Your Honor.

1 **THE COURT:** Okay. And I'll incorporate by
2 reference any arguments you made and any additional arguments
3 you would make at this time for record purposes.

4 **MR. POWELL:** Nothing that we haven't already
5 offered to the Court.

6 **THE COURT:** Okay. Those are deemed incorporated by
7 reference. The Court will give them appropriate weight.

8 Mr. Haag, a response from the Government?

9 **MR. HAAG:** Your Honor, for the reasons stated in
10 the United States of America's trial brief, we respectfully
11 ask the Court to deny the motion.

12 **THE COURT:** Okay. The motion is denied for the
13 reasons stated in that brief and reasons previously argued by
14 the Government.

15 Regarding forfeiture in this case, I know the
16 Government represented that there would be a parallel
17 proceeding to adjudicate the forfeiture issues.

18 Pursuant to Rule 32.2, the Court will now address
19 Notice of Forfeiture. The Court will hear any objections to
20 a Notice of Forfeiture that was issued in this case.

21 Is there any objection to the Notice of Forfeiture?

22 **MR. HAAG:** None from the United States, Your Honor.

23 **MR. POWELL:** No, Your Honor.

24 **THE COURT:** Okay. Based on the parties' responses,
25 the Court will defer ruling on any forfeiture and subject to

1 those parallel proceedings without any prejudice to whether
2 those assets and those things subject to forfeiture are
3 deemed administratively forfeited or judicially so.

4 I will anticipate filings from the United States
5 Attorney's Office specific to forfeiture, and I anticipate
6 that will come from the Asset Forfeiture/Money Laundering
7 Section.

8 And the Court will issue preliminary orders as
9 appropriate in response to those forfeiture filings.

10 Now, regarding sentencing, in the coming days, this
11 Court will enter an order setting schedule for sentencing,
12 which requires the relevant United States Probation Officer
13 to prepare a Presentence Report and sets forth the relevant
14 deadlines for objections, responses, and addendum.

15 During that Presentence Report process, the United
16 States Probation Officer may request to meet with the
17 defendant, who has an ongoing and continuing right to counsel
18 and to have counsel present throughout that presentence and
19 sentencing process.

20 So, Mr. Powell, I'll just admonish you to advise
21 your counsel of that presentencing process and his right to
22 counsel throughout that process.

23 **MR. POWELL:** We will, Your Honor.

24 **THE COURT:** Okay. And the Court's order will also
25 include an anticipated date for the sentencing hearing

1 itself, and most of the deadlines will then back up from that
2 date.

3 Now, regarding custody. After a defendant has been
4 convicted for a federal offense, there is a presumption that
5 defendant will be remanded into the custody of the
6 Government, specifically the United States Marshal.

7 Defendant must rebut the presumption by clear and
8 convincing evidence that, No. 1, defendant is not a flight
9 risk; and, No. 2, defendant is not a danger to any person.

10 Mr. Powell, are you prepared to make an argument,
11 or do you need a break to prepare those arguments?

12 **MR. POWELL:** Can I have just a moment, Your Honor?

13 **THE COURT:** Yes, and I'll instruct my courtroom
14 deputy to disable the microphones for purposes of that
15 attorney communication.

16 **(Mr. Powell/Mr. Haag sotto-voce conference.)**

17 **MR. POWELL:** Your Honor, it's my understanding in
18 talking to the Government counsel that they were not going to
19 move to detain him today. That was an agreement that was
20 reached with Mr. Cogdell and the Government a couple of days
21 ago now, and that's still my understanding from visiting with
22 them, that they are not going to move to detain him today.

23 **THE COURT:** Okay. So the Court will make a series
24 of findings in response to that. I know that's the
25 agreement of parties, but I have a separate independent

1 obligation to weigh those concerns.

2 So regarding flight risk, although there are travel
3 items that appear in the Pretrial Service Report, which is
4 filed under seal, travel to Bermuda and other areas like
5 that, defendant has forfeited his passport, and it's my
6 understanding that he has been compliant with conditions of
7 pretrial release. Is that correct, Mr. Haag?

8 **MR. HAAG:** That is correct, Your Honor.

9 **THE COURT:** Okay. Now, regarding danger to any
10 person — this would also include danger to self — here, the
11 Pretrial Service Report does reflect that although -- and I'm
12 quoting directly, although this instant offense and this
13 experience has been emotionally taxing on his family and
14 especially on his wife, he has a strong and stable support
15 system in his family.

16 I want to make certain that the Government agrees
17 that by their assessment that continues to be true?

18 **MR. HAAG:** It is, Your Honor.

19 **THE COURT:** And, Mr. Powell, would you agree with
20 that initial Pretrial Service Report assessment of the
21 support and family network available to this defendant
22 through the sentencing process?

23 **MR. POWELL:** We do, Your Honor.

24 **THE COURT:** Okay. Based on those representations
25 and also the findings set forth in the Pretrial Service

1 Report, the Court does find defendant is not a danger to any
2 person, and, in summary, the Court finds defendant has
3 proved, by clear and convincing evidence, that he is not a
4 flight risk or a danger to any person.

5 The terms and conditions of defendant's pretrial
6 release remain in effect, so, Mr. Powell, I'll have you
7 explain those to the defendant.

8 He is to remain on those conditions of pretrial
9 release and then expect an order setting sentencing schedule
10 in the coming weeks. Do you understand that?

11 **MR. POWELL:** Yes, sir.

12 **THE COURT:** Okay. The Court stands in recess. We
13 are adjourned in this matter. And I thank you for all of
14 your hard work and time.

15 **COURT SECURITY OFFICER:** All rise.

16 **(End of trial by jury.)**

17 * * * * *

18 I certify that the foregoing is a correct transcript
19 from the record of proceedings in the above-entitled matter.
20 I further certify that the transcript fees format comply with
21 those prescribed by the Court and the Judicial Conference of
22 the United States.

23
24 s/Stacy Mayes Morrison
25 Stacy Mayes Morrison
Official Court Reporter

11/10/2021
Date

Stacy Mayes Morrison
Official Court Reporter